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# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 17,672

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WHITNEY NATIONAL BANK IN JEFFERSON PARISH, *Appellant,*

*v.*

BANK OF NEW ORLEANS AND TRUST COMPANY, *et al., Appellees.*

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No. 17,681

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JAMES J. SAXON, COMPTROLLER OF THE CURRENCY, *Appellant,*

*v.*

BANK OF NEW ORLEANS AND TRUST COMPANY, *et al., Appellees.*

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ON APPEAL FROM A JUDGMENT OF THE UNITED STATES  
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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JOINT APPENDIX



CIVIL DOCKET

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

C. A. No. 1857-62

BANK OF NEW ORLEANS AND TRUST CO., ET AL.

v.s.

JAMES J. SAXON, ET ANO.

RELEVANT DOCKET ENTRIES

Date	PROCEEDINGS
1962	
June 9	Complaint.
June 9	Motion of plaintiffs for preliminary injunction; affidavit of Edward L. Merrigan; exhibits A through D.
June 19	Motion of Whitney National Bank in Jefferson Parish to intervene.
June 20	Opposition of defendants to motion of plaintiffs for preliminary injunction; affidavit of James J. Saxon, exhibits 1, 2, 3, 4, 5 and 6.
June 21	Affidavit of James J. Gilly, President of Whitney National Bank in Jefferson Parish; exhibits A, B, C, D, D-1, D-2, E and F.
June 21	Response of defendant to motion of Whitney National Bank in Jefferson Parish to intervene.
June 26	Opposition of plaintiffs to motion of Whitney National Bank in Jefferson Parish to intervene.
June 26	Affidavit of Morgan L. Whitney and exhibits A through D; exhibit to motion of Whitney National Bank in Jefferson Parish to intervene.
June 26	Affidavit of Laurence A. Merrigan; exhibits E, F, H, and I.
June 26	Motion of the Bank of Louisiana in New Orleans to intervene.
June 26	Motion of plaintiff #2 for voluntary dismissal; affidavit of Paul F. Rogyom.

## Date

## PROCEEDINGS

1962

- June 27 Motion of plaintiff for temporary restraining order; affidavit of Edward L. Merrigan.
- June 27 Temporary Restraining Order, security in sum of \$1,000.00; issued at 11:05 A.M. June 27, 1962. Hart, J.
- June 29 Response of defendant to motion for voluntary dismissal by Merchants Trust and Savings Bank.
- June 29 Response of defendant to motion of Bank of Louisiana in New Orleans to intervene.
- July 5 Affidavit of Jacques A. Livaudais; affidavit of Edward L. Merrigan; affidavit of Leon M. Trice; exhibits J-O inclusive.
- July 5 Order granting motion of The Bank of Louisiana in New Orleans for leave to intervene as plaintiff. Pine, J.
- July 6 Affidavit of attorney Joseph Merrick Jones.
- July 7 Transcript of proceedings of June 27, 1962; pages 1-27; Reporter George G. Davis (Clerk's copy).
- July 6 Order dismissing cause as to plaintiff #2. Holtzoff, J.
- July 10 Order granting Whitney National Bank in Jefferson Parish leave to intervene as party defendant. Holtzoff, J.
- July 10 Answer of Whitney National Bank in Jefferson Parish to complaint; exhibit.
- July 10 Findings of fact and conclusions of law. Holtzoff, J.
- July 10 Preliminary injunction restraining defendant #1; Bond set at \$50,000.00 to be filed no later than 7-17-62. Holtzoff, J.
- July 11 Motion of defendant Saxon for summary judgment; statement.
- July 16 Transcript of proceeding of July 6, 1962; Vol. 1, pages 1-87 (Rep. by Gerald Nevitt).
- July 24 Opposition of plaintiff to motion of defendant Saxon for summary judgment; cross motion for summary judgment; statement; exhibits L, M of plaintiffs; affidavits of Clyde C. Wheeler and R. J. Castille.

Date

## PROCEEDINGS

1962

- Aug. 10 Opposition of defendant comptroller of the currency to plaintiffs' cross-motion for summary judgment and further cross-motion of said defendant to dismiss; statement of facts; supplementary affidavit of James J. Saxon; exhibit 7.
- Aug. 13 Motion of intervening defendant for leave to amend answer; exhibit.
- Aug. 13 Motion of intervening defendant for summary judgment; statement of intervening defendant of material facts; affidavit of E. A. Waffenschmidt; affidavit of James Gilly and exhibits (4); points and authorities in support of this motion and in opposition to plaintiffs' motion for summary judgment.
- Aug. 13 Statement of genuine issues of intervening defendant in opposition to plaintiffs' motion for summary judgment.
- Aug. 22 Response of defendant #1 to motion of intervening defendant for summary judgment.
- Aug. 22 Response of defendant #1 to motion of intervening defendant for leave to amend answer.
- Sept. 5 Motion of J. W. Jeansonne, State Bank Commissioner of Louisiana, to intervene as plaintiff; exhibit.
- Sept. 5 Opposition of plaintiffs to intervening defendant's motion for summary judgment and motion for leave to amend and to defendant's motion to dismiss.
- Sept. 6 Plaintiffs' exhibits O through Y.
- Sept. 6 Statement of plaintiffs of genuine issues in opposition to defendant's and intervening defendant's cross-motion for summary judgment.
- Sept. 7 Stipulation re motions filed 8-10-62, 7-11-62, 8-13-62 and 7-24-62.
- Sept. 7 Consent order allowing J. W. Jeansonne, State Bank Commissioner of Louisiana, to intervene as a plaintiff and directing complaint filed; amending caption of action: Jones, J.
- Sept. 7 Order granting Whitney National Bank leave to serve and file amended answer. Jones, J.

Date

## PROCEEDINGS

1962

- Sept. 10 Supplemental answer of intervening defendant Whitney National Bank in Jefferson Parish.
- Sept. 10 Complaint of intervening plaintiff J. W. Jeansonne.
- Sept. 14 Affidavit of James Gilly, Jr.; intervening defendant's exhibit 6.
- Sept. 18 Answer of intervening defendant to complaint of intervening plaintiff, J. W. Jeansonne.
- Sept. 25 Motion of National Association of Supervisors of State Banks for leave to appear as Amicus Curiae; memorandum; appendices A, B, C, D.
- Sept. 26 Opposition of J. W. Jeansonne to motion for summary judgment; exhibits 1 and 3.
- Sept. 26 Order granting motion of National Association of Supervisors of State Banks to appear as Amicus Curiae. Sirica, J.
- Sept. 27 Plaintiffs' exhibits H, Z-1, Z-2, AA-1, AA-2, BB, CC-1, CC-2.
- Sept. 27 Supplemental statement of plaintiffs of genuine issues.
- Oct. 2 Memorandum of Amicus Curiae National Association of Supervisors of State Banks; appendices A, B, C, D.
- Oct. 5 Opposition of defendant Saxon to cross-motion of intervening plaintiff Jeansonne for summary judgment; statement.
- Oct. 10 Motion of defendant Comptroller for summary judgment, cross motion of plaintiffs for summary judgment, motion of intervening defendant for summary judgment, cross motion of intervening plaintiff for summary judgment, and motion of defendant Comptroller to dismiss heard and taken under advisement (Rep. G. R. Walker). McLaughlin, J.
- Nov. 5 Memorandum granting cross-motions for summary judgment of plaintiffs and intervening plaintiffs; denying motions for summary judgment of defendant and intervening defendant and denying cross-motion to dismiss of defendant. McLaughlin, J.

## Date

## PROCEEDINGS

1962

- Nov. 16 Transcript of proceedings 10-11-12, Volume 1, pages 1-123 (Rep. G. Russell Walker) (court copy).
- Nov. 23 Objections of intervening defendant to proposed order for summary judgment; memorandum.
- Nov. 26 Objections of defendant Saxon to form of proposed order for summary judgment and Judgment.
- Dec. 5 Findings of fact and conclusions of law. McLaughlin, J.
- Dec. 5 Order denying defendant's and intervening defendant's motions for summary judgment and defendant's motion to dismiss; granting plaintiffs' and intervening plaintiffs' cross-motions for summary judgment; ordering that defendant Comptroller of Currency may not issue a certificate of authority to intervening defendant and permanently enjoining such issuance; undertaking discharge; with costs. McLaughlin, J.

1963

- Jan. 31 Notice of appeal of intervening defendant, Whitney National Bank in Jefferson Parish.
- Feb. 1 Notice of appeal of defendant.
- Feb. 7 Cost bond on appeal of Whitney National Bank in amt. of \$250.00 with The Fidelity & Casualty Co. of New York approved. (fiat) Jones, J.

Filed June 9, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title Omitted]

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION

1. Plaintiff, Bank of New Orleans and Trust Company, is a banking corporation duly organized and existing under and pursuant to the laws of the State of Louisiana. Said plaintiff, a State bank, maintains its principal office and banking branches entirely within the City of New Orleans, Parish of Orleans, State of Louisiana, and at these banking facilities, so located and limited, serves and depends upon the banking business of customers and depositors resident and located principally in the Parishes of Orleans and Jefferson, State of Louisiana.

2. Plaintiff, Merchants Trust and Savings Bank, is a banking corporation duly organized and existing under and pursuant to the laws of the State of Louisiana. Said plaintiff, a State bank, maintains its banking offices and facilities entirely on the East Bank of the Mississippi River in the Parish of Jefferson, State of Louisiana, and at these facilities, so located and limited, serves and depends almost entirely upon the banking business of customers and depositors resident or located in the Parish of Jefferson, State of Louisiana.

3. Plaintiff, Guaranty Bank and Trust Company, of Lafayette, Louisiana, is a banking corporation organized and existing under and pursuant to the laws of the State of Louisiana and maintains banking offices and facilities in Lafayette Parish, State of Louisiana, which Parish is very close to the Parishes of Jefferson and Orleans, and said bank joins as a plaintiff herein because the orders and actions of the defendant herein complained of will have a serious adverse effect upon and will cause irreparable damage to its banking business, limited by law to its Parish as aforesaid.

4. Defendant is the Comptroller of the Currency, an offi-

cer of the United States Government, appointed to serve and serving under and pursuant to the provisions of *Title 12 U.S.C. § 1, et seq.*, and defendant, who maintains his office in the District of Columbia, is an "agency" of the said United States Government within the meaning of *Title 5 U.S.C. § 1001, et seq.*, and defendant is sued herein in his capacity as such Comptroller of the Currency.

5. The jurisdiction of this Court over this action is predicated upon the provisions of *Title 28 U.S.C. § 1331*, this being an action arising under the laws of the United States wherein the matter in controversy exceeds the sum of value of \$10,000., exclusive of interest and costs; and upon the provisions of law which grant to this Court the jurisdiction and power to render declaratory judgments, restraining orders and injunctions in proper cases; and upon the provisions of *Sections 11-305 and 11-306* of the District of Columbia Code (1961 Edition) which grant to this Court general jurisdiction over all cases in law and equity between parties, either of which shall be resident or found within the District of Columbia and which involve an amount in controversy, exclusive of interest and costs, in excess of \$3,000.

6. This action arises under *Sections 27 and 36* of Title 12 of the United States Code, commonly referred to as the National Banking Act, and under other provisions of federal law found in *Title 12 U.S.C. § 1811, et seq.*, commonly referred to as the Bank Holding Company Act. As hereinabove and hereinafter set forth, plaintiffs are all engaged in the banking business in the State of Louisiana, where each has a very substantial investment in capital, property, equipment and good will, irreparable damage to which is imminently threatened by action of the defendant proposed and announced to be taken by him arbitrarily in direct contravention of the aforementioned provisions of Federal law and of provisions of the laws of the State of Louisiana to be referred to more specifically hereinbelow.

Plaintiffs pray herein (1) for a declaratory judgment that any issuance by the defendant Comptroller of the Currency of a Certificate of Authority to Commence Banking in the Parish of Jefferson, State of Louisiana to the Whitney National Bank of New Orleans, the Whitney Holding Corporation of New Orleans and or the Whitney National Bank of Jefferson Parish would be unlawful and void under



*Title 12 U.S.C. § 36 and Title 12 U.S.C. § 1841, et seq.*, and would constitute an unlawful, arbitrary abuse of discretion and authority in violation of *Title 12 U.S.C. § 27*, and (2) for preliminary and permanent injunctions to enjoin the defendant Comptroller of the Currency from issuing to the said Whitney National Bank of New Orleans, the Whitney Holding Corporation of New Orleans and/or the Whitney National Bank of Jefferson Parish any Certificate or Certificates of Authority to commence banking business in the Parish of Jefferson, State of Louisiana.

7. Heretofore, and for a long period of years extending back approximately 79 years, the aforesaid Whitney National Bank of New Orleans has operated banking offices and facilities wholly within the City of New Orleans, Parish of Orleans, State of Louisiana; and said bank presently conducts such operations in the Parish of Orleans under a certificate or certificates issued to it by the Comptroller of the Currency under the National Banking Act (*Title 12 U.S.C. § 21, et seq.*). The said Whitney National Bank of New Orleans is by far the largest banking institution in the City of New Orleans and the State of Louisiana, and is one of the largest banks in the entire southern portion of the United States. On June 30, 1961, the said bank held approximately 39% of the total deposits in all banks in the Parish of Orleans, State of Louisiana, and 44% of all deposits of individuals, partnerships and corporations, albeit there are numerous other State and National banks with offices, banking facilities and branches throughout the said Parish.

In addition, while the said Whitney Bank holds and has maintained over the years a dominant position over all of the other banks combined in the City of New Orleans (Parish of Orleans), it has also managed to accumulate and hold in its banking facilities, located in New Orleans (Parish of Orleans), deposits of individuals, partnerships and corporations emanating from the East Bank of the Mississippi River in Jefferson Parish, Louisiana, (a parish or county beyond the limits of Orleans), in an aggregate amount exceeding 30% of all such deposits held by all banks having head banking offices and facilities in the very same East Bank area of said Jefferson Parish, Louisiana.

8. Under long standing provisions of the National Banking Act, national banks, such as Whitney National Bank, historically and steadfastly have been prohibited by law

from opening branches or additional banking offices or facilities in any county, parish or city, *other than that in which its main office or banking facilities are located*, unless State banks, i.e., banks chartered under the law of the State in which both types of banks (State and National), operate, are likewise authorized by State law so to expand. In this connection, *Title 12 U.S.C. § 63* provides in pertinent part:

**"Branch Bank"**

"The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

"(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks . . .

"(c) No branch of any national banking association shall be established . . . without first obtaining the consent and approval of the Comptroller of the Currency.

"(f) The term 'branch' as used in this section shall be held to include *any branch bank, branch office, branch agency, additional office, or any branch place of business* located in any State . . . at which deposits are received, or checks paid, or money lent."—(Emphasis supplied.)

Moreover, *Title 12 U.S.C. § 27*, entitled "*Certificate of Authority to commence banking*", provides that before granting any certificate to any national bank authorizing the commencement of business at any location, the Comp-

troller shall determine whether such bank has complied with all the provisions required to be complied with before commencing the business of banking", and said section of the National Banking Act then provides:

"But the Comptroller may withhold from an association his certificate authorizing the commencement of business, *whenever he has reason to suppose that the shareholders have formed the same for any other than the legitimate objects contemplated by this chapter.*" (Emphasis supplied.)

9. The laws of the State of Louisiana *do not* authorize State Banks to establish, operate and expand new branch or additional banking facilities to any point within the State. On the contrary, the statutes of Louisiana (*La. Rev. Stat. 6:54, 328*), as written and as historically applied by the Louisiana Banking Commissioner, expressly prohibit any bank with more than \$100,000. capital from opening a branch or an additional banking facility in any parish (i.e., county), beyond the parish in which its main office is located, if another bank is already located and operating in the parish into which the large bank would like to expand. Plaintiff, Merchants Trust and Savings Bank, and others are already located and operating in Jefferson Parish, Louisiana, and have invested large amounts of capital in their facilities so located in reliance upon said protections of the law.

10. Upon information and belief, at all times hereinafter mentioned, the existence and contents of the above referred to provisions of the National Banking Act and the laws of Louisiana were and continue to be well known to defendant herein, the Comptroller of the Currency, by his predecessor in office, and to the management of the aforementioned Whitney National Bank of New Orleans.

11. Upon information and belief, heretofore and in or about 1959 or earlier, and in the face of complete knowledge of the aforementioned federal and state statutory prohibitions, the management of the Whitney National Bank of New Orleans commenced to consider and study ways and means whereby the said Whitney National Bank might attempt to evade and circumvent the said federal and state statutes involved, and proceed to locate and operate addi-

tional new branch bank facilities beyond the limits of the Parish of Orleans and within that part of Jefferson Parish on the East Bank of the Mississippi River wherein plaintiff, Merchants Trust and Savings Bank, among others, had already invested very large sums of capital and had established and were operating, and had been developing over the years, under authority issued by the State of Louisiana, extensive and complete banking facilities.

12. Finally, after giving full consideration to various legal maneuvers which might be attempted so as to gain the required Certificate of Authority from the Comptroller of the Currency in the District of Columbia for the opening of one or more such new branch bank facilities in Jefferson Parish, the management of the Whitney National Bank of New Orleans fashioned and adopted the following device as a basis for an attempt at evasion and circumvention of the said federal and state statutes, and application was made to the Comptroller of the Currency, under the very same federal statute involved, for approval and issuance of a certificate whereby, after all of the proposed evasion maneuvers were completed, would authorize Whitney National Bank of New Orleans to open and operate new branch bank facilities in Jefferson Parish, Louisiana. The proposed method for evading the laws of the United States and the State of Louisiana prohibiting branch bank facilities beyond parish lines is as follows:

*Step 1.* Whitney National Bank would cause to be organized a Louisiana corporation called "Whitney Holding Corporation". The sole initial capital investment in this corporation would be \$350,000,—every cent of which (other than directors' qualifying shares) was to come from the capital funds of the Whitney National Bank. In return for this investment, the Whitney Bank was to receive 5,600 shares of stock of Whitney Holding. These 5,600 shares would be distributed to the stockholders of the Bank as a stock dividend (1.20 share in the Holding Corporation for each share held by the stockholder in the Bank).

*Step 2.* Whitney National Bank would cause to be organized a "phantom" or *non-operating* bank in the City of New Orleans, Parish of New Orleans, under the name "Crescent City National Bank"; to which the Comptroller of the Currency would issue a National banking charter with full

knowledge that said Crescent City National Bank was created solely for the purpose of merging the existing Whitney into said non-operating bank. The Holding Corporation would then invest the entire \$350,000. it received from Whitney National Bank in this new "phantom organization", in exchange for all of its authorized stock (112,000 shares, with par value of \$2.50).

*Step 3.* The "phantom bank", Crescent, would then consolidate or merge *by written agreement* with Whitney National Bank. The stock in "Crescent" would continue to be held by the Whitney Holding Corporation, but then the Holding Corporation would exchange the balance of its stock with the stockholders in Whitney National Bank, *so that the Holding Corporation would then own all of the stock in Whitney National Bank and, in turn, the stockholders in Whitney National Bank would then own all of the stock in Whitney Holding Corporation.*

*Step 4.* Then, when this conduct process of evasion had been completed, Whitney National Bank would provide an additional \$650,000. from its capital account to Whitney Holding Corporation, which funds would be used by the Holding Corporation to create the branch bank in Jefferson Parish to be called Whitney National Bank of Jefferson Parish. All stock in the branch bank, so organized, would be held by the Holding Corporation, and the branch would commence business, with \$650,000 in capital supplied directly by the present bank in Orleans Parish, having completely contravened and evaded the prohibiting statutes.

13. Plaintiffs assert that the aforementioned scheme for evasion of federal and state banking laws is not only in direct violation of the letter and intent of *Title 12 U.S.C. § 36*, but it is also in violation of the intent of the following provisions of the Bank Holding Company Act, *Title 12 U.S.C. § 1841, et seq.*:

(i) *Title 12 U.S.C. § 1845*, which provides:

"(a) From and after May 9, 1956, it shall be unlawful for a bank—

"(1) to invest any of its funds in the capital stock, bonds, debentures, or other obligations of a bank holding company of which it is a subsidiary, or of any other subsidiary of such bank holding company. . . .

“(2) to make any loan, discount or extension of credit to a bank holding company of which it is a subsidiary of such bank holding company. . . .”

As alleged in Paragraph 13 of this complaint, the plan of the Whitney National Bank, a proposed subsidiary of the Whitney Holding Corporation, involves the investment (or extension of credit), of first \$350,000 and then \$650,000, or a total of \$1,000,000 of the funds of the Whitney National Bank of New Orleans in the capital stock of a bank holding company of which it is a subsidiary.

(ii) *Title 12 U.S.C. § 1846*, which provides:

“*Reservation of rights to States*—The enactment by the Congress of this chapter shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to *banks*, bank holding companies, and subsidiaries thereof.” (Emphasis supplied.)

The entire purpose of the instant scheme or device involving the establishment of Whitney Holding Corporation and the Holding Company's establishment of a bank in Jefferson Parish, was to prevent, evade and circumvent the State of Louisiana's historic power and statutory jurisdiction to prevent large banks, such as Whitney National Bank of New Orleans, from expanding across parish or county lines to open branches in a new parish or county in competition with smaller state banks already conducting a banking business in the latter parish or county, and thus, such device for evasion of the law was patently in contravention of the last mentioned provisions of the Bank Holding Company Act.

14. In spite of the foregoing, and after creating the corporate shells and devices required to effectuate the aforementioned evasion of the laws prohibiting branch banking across parish lines, Whitney National Bank of New Orleans, in company with the newly created Whitney Holding Corporation, applied to defendant herein, the Comptroller of the Currency, for approval of the various steps of the device leading to establishment of the branch bank in Jefferson Parish, Louisiana.

15. Upon information and belief, defendant, without hold-



ing hearings or seeking to obtain the views or testimony of any of the plaintiffs herein and after various of the employees and agents of his office conducted *ex parte* conferences and discussions with officers or representatives of the Whitney National Bank of New Orleans, and in spite of the aforementioned long standing prohibitions of federal and state law, approved the formation of the proposed "phantom bank", Crescent City National Bank in New Orleans, and the branch operation of the Whitney National Bank to be known as the Whitney National Bank in Jefferson Parish, but his approval was made subject to the approval of the Board of Governors of the Federal Reserve System to the acquisition of the shares in these two banks by the Whitney Holding Corporation.

16. Upon information and belief, the newly created Whitney Holding Corporation thereupon made application to the Federal Reserve Board for approval of such acquisition of shares; and upon receipt thereof, and in accordance with the provisions of *Title 12 U.S.C. § 1812(b)*, said Board gave notice of such application to defendant, the Comptroller of the Currency, and asked defendant to submit to the Board his views upon the lawfulness and desirability of the matters proposed.

17. Upon information and belief, defendant, the Comptroller of the Currency, charged with full knowledge of the aforementioned prohibitions and restrictions of the National Banking Act and of the laws of the State of Louisiana and of the Bank Holding Company Act and possessed of knowledge of the basic intent and purpose of the Whitney National Bank, by means of the device proposed in such application, to evade such laws, nevertheless made no effort and took no step to disapprove such application in accordance with the provisions of said *Title 12 U.S.C. § 1812(b)*. On the contrary, the said Comptroller of the Currency, upon information and belief, notified the Board that he favored the plans and proposals of the applicant and recommended approval of same.

Upon information and belief, this action on the part of defendant Comptroller of the Currency caused the Federal Reserve Board to forego the holding of a formal, statutory hearing on the application, as provided in *Title 12 U.S.C. § 1812(b)*, and enabled the President of the aforementioned Whitney National Bank of New Orleans and



Whitney Holding Corporation to make the following representations to the Board in support of the application:

"Under present laws in our State, the Whitney is not permitted to establish branches outside the Parish of Orleans. . . .

"The management of the Whitney National Bank has been studying and weighing alternative methods of entering Jefferson Parish to serve our present customers who have moved their plants there, or who have gone there to live and to participate in the further growth of that area. . . .

"The officers of the Whitney National Bank determined in 1960 that the holding company was the proper solution, provided we could put the ownership of the present Whitney National Bank of New Orleans stock into such a company and, by the use of Whitney assets, establish a bank in Jefferson Parish, which would likewise be fully owned by the holding company.

*"The Comptroller of the Currency has concurred in a program which has the effect of putting the ownership of the present Whitney National Bank stock into the Whitney Holding Corporation, through this Crescent City National Bank that was mentioned, and to the establishment of the Whitney National Bank in Jefferson Parish with funds from the present Whitney National Bank, the stock in which would be also owned by the holding company."* (Emphasis supplied.)

18. On the basis of this record, the Federal Reserve Board, on May 3, 1962, issued an order approving the application of Whitney Holding Corporation to acquire the shares in the Whitney National Bank in New Orleans and its new branch in Jefferson Parish, Louisiana.

Plaintiffs herein are petitioning the Federal Reserve Board for reconsideration of this order and are requesting the Board to vacate its said order and to schedule this matter for formal hearing under the Bank Holding Company Act. Plaintiffs represent to the Court that, if the Board fails to grant the relief requested, plaintiffs intend to apply for review of said Board's order in the United States Court of Appeals for the Fifth Circuit, as provided by Title 12 U.S.C. § 1848, such application to be

filed within 60 days of May 3, 1962, the date upon which the said Order was entered.

19. Thereafter, and under date of May 18, 1962, defendant herein, the Comptroller of the Currency, entered his formal approval of the consolidation of Whitney National Bank of New Orleans with the Crescent City National Bank, effective May 24, 1962, and is presently considering almost immediate issuance of his Certificate or Certificates of Authority which will enable the new branch bank facility to open and commence to operate a banking business at one or more locations in Jefferson Parish under the name of Whitney National Bank of Jefferson Parish.

20. Plaintiffs verily believe that defendant, unless enjoined, will, without any notice of intention to plaintiffs, issue in the name of Whitney National Bank of New Orleans, or Whitney Holding Corporation, or Whitney National Bank of Jefferson Parish the aforesaid Certificate or Certificates of Authority, all in contravention of the letter, intent and purposes of *Title 12 U.S.C. §§ 27, 36 and 1811, et seq.*, and that after said Certificate or Certificates are issued as aforesaid, plaintiffs will have no adequate remedy at law, either to compel revocation of same or to prevent the Whitney Bank from so operating in Jefferson Parish.

21. Plaintiffs further allege that the unlawful and arbitrary issuance by defendant of his certificate or certificates, authorizing the Whitney National Bank to open and operate a new branch facility or facilities in Jefferson Parish as aforesaid will cause great and irreparable damage to the banking business of said plaintiffs for the following reasons:

(a) Plaintiff, Bank of New Orleans and Trust Company, a State bank chartered under the laws of Louisiana to conduct a banking business limited to a main office and branches wholly within the Parish of Orleans, has a total capital of approximately \$1,562,500.; total resources of \$62,719,121.; surplus of \$1,437,500. and undivided profits of \$383,892. Under the laws of Louisiana, this plaintiff, a relatively small competitor of the Whitney National Bank of New Orleans in the banking business in the Parish of Orleans (Whitney, for example, is believed to possess undivided profits of approximately \$13,835,000 and \$27,200,-

000 in its surplus account) cannot by law, expand its facilities to open and operate a new branch facility beyond the boundaries of the Parish of Orleans in Jefferson Parish. And, yet, because the Parish of Jefferson is contiguous to the Parish of Orleans, many of said plaintiff's depositors and borrowers in New Orleans are persons and businesses residing and located in Jefferson Parish, who maintain deposits or loan accounts at this plaintiff's offices within the Parish of Orleans. This plaintiff alleges and verily believes that one of the primary purposes of the application of the Whitney National Bank before the defendant for the authority to open and operate new branch facilities in Jefferson Parish is to attempt to divert and appropriate to itself a substantial part of the banking business and services now enjoyed by this plaintiff and other New Orleans State banks similarly situated from sources in Jefferson Parish. Thus, the unlawful issuance of a certificate by defendant to said Whitney National Bank, would cause the plaintiff to suffer severe, irreparable damage, including the loss of customers' business, deposits and consequent loss of profit or net income. Moreover, this plaintiff would be irreparably damaged by the inability to continue to compete with the said Whitney National Bank on an equal footing as far as location of facilities are concerned, and would be prevented by laws of the State of Louisiana, from any appropriate relief or remedy in the premises.

(b) Plaintiff, Merchants Trust and Savings Bank, a State bank chartered under the laws of Louisiana to conduct a banking business limited by law to facilities wholly within the boundaries of the Parish of Jefferson, has capital and resources, surplus and undivided profits approximately as follows:

Capital	\$ 187,500.
Resources	\$7,717,660.
Surplus	\$ 212,500.
Undivided Profits	\$ 62,914.

Said plaintiff is limited by law to conducting a banking business with facilities confined to Jefferson Parish. This plaintiff may not expand into the Parish of Orleans to compete, through branches there, with the Whitney National

Bank for business in that Parish. Thus, being a relatively small banking institution, this plaintiff and others like it in Jefferson Parish must look almost exclusively to banking business and deposits emanating from customers and business firms located in Jefferson Parish. Said plaintiff alleges and verily believes that one of the primary purposes of the application of the application of the Whitney National Bank before the defendant is to attempt to divert and appropriate to itself a substantial part of the banking business and services now enjoyed and developed over a long period of years by this plaintiff from sources on the East Bank of the River in Jefferson Parish. Thus, the unlawful issuance of a certificate by defendant to said Whitney National Bank would cause plaintiff to suffer severe, irreparable damage, loss of customers' business, deposits, and consequent loss of profit or net income. Furthermore, the unlawful granting of such certificate would bring to bear on this small bank, and numerous others in Jefferson Parish like it, new, wholly un contemplated competition from the combined resources, deposits and lending power of the very largest bank in the entire State of Louisiana, and such competition, in contravention of law, will irreparably damage the entire business of all such banks presently doing business in Jefferson Parish.

(c) Plaintiff, Guaranty Bank and Trust Company of Lafayette, Louisiana, is likewise a State bank chartered under the laws of Louisiana to conduct a banking business limited by law to a main office and branches in Lafayette Parish, Louisiana, very near the Parish of Jefferson. This plaintiff's financial investment and resources are as follows:

Capital	\$ 600,000.
Resources	\$23,153,556.
Surplus	\$ 600,000.
Undivided Profits	\$ 1,079,999.

This plaintiff alleges and verily believes that one of the primary purposes of the application of the Whitney National Bank before the defendant is to destroy the statutory prohibitions, both federal and state, which have prevented the said Whitney Bank, the largest in the State of Louisiana, from expanding throughout various parishes in the State of Louisiana and from opening branch facilities,

through the medium of a holding company, at different points, including places possibly in the parish in which this plaintiff has conducted and developed its business. Any such expansion would bring to bear upon plaintiff, a very small banking organization by comparison, destructive competition backed by the combined capital, resources and lending power and authority of the Whitney National Bank and its various branch facilities. Under the laws of the State of Louisiana, plaintiff could not compete and meet any resulting loss of business by opening branches of its own in some other parish in the State. Thus, plaintiff would likewise suffer irreparable damage from the unlawful issuance of a certificate by the defendant herein.

(d) All of the plaintiffs herein allege and verily believe that there already exist in Jefferson Parish, Louisiana ample, modern and complete banking facilities, sufficient to serve the public interest, convenience and necessity in that Parish, and that the investments in such facilities, made in reliance upon the protective provisions of federal and State law, would be irreparably damaged if defendant were unlawfully to permit the Whitney National Bank to establish new branch facilities therein.

WHEREFORE, plaintiffs pray (a) that this Court enter judgment herein declaring that the defendant Comptroller of the Currency is prohibited by Title 12 United States Code, Sections 27, 36 and 1841, et seq. from issuing to the Whitney National Bank, and/or the Whitney Holding Corporation and/or the Whitney National Bank of Jefferson Parish, a Certificate or Certificates of Authority authorizing them or any of them to establish new branch bank facilities in the name of the Whitney National Bank or otherwise in Jefferson Parish, State of Louisiana; and, (b) in order to prevent immediate and irreparable injury, loss and damage to plaintiffs herein, that this Court grant a preliminary injunction and permanent injunction herein, restraining and enjoining defendant, the Comptroller of the Currency, from issuing to the Whitney National Bank, also known by the name of Crescent City National Bank, the Whitney Holding Corporation and/or the Whitney National Bank of Jefferson Parish, a Certificate or Certificates of Authority authorizing the establishment of new branch bank facilities by them or any of them in the name of Whitney Na-

tional Bank or otherwise in Jefferson Parish, State of Louisiana, and, (c) that this Court grant such other and further relief as may seem just and proper and as the exigencies of the case may demand.

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Kenner, Louisiana.

JAMES W. BEAN, Esq.,  
Bean & Rush, Esqs.,  
Lafayette, Louisiana.

*Of Counsel*

Filed June 9, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1857-62

[Title omitted]

**MOTION FOR PRELIMINARY INJUNCTION**

Come now the plaintiffs herein by undersigned counsel and respectfully move this Court to grant a preliminary injunction restraining the defendant from issuing his Certificate or Certificates authorizing the establishment and operation by the Whitney National Bank of New Orleans, the Whitney Holding Corporation of New Orleans, Louisi-

ana and/or the Whitney National Bank of Jefferson Parish, Louisiana, of a new branch bank or banks within Jefferson Parish, State of Louisiana; and, in support of such motion, direct the Court's attention, to the Complaint herein; the Affidavit of plaintiffs' counsel, submitted in support of this Motion and the Motion for Temporary Restraining Order herein; and the points and authorities filed simultaneously herewith.

WHEREFORE, plaintiffs pray the Court to hear this motion promptly and to issue a preliminary injunction restraining defendant from issuing his Certificate or Certificates above described, pending the hearing and determination of the complaint herein.

EDWARD L. MERRIGAN,  
Attorney for Plaintiffs,  
425 13th St., N.W.,  
Washington, D.C.

RALPH FISHMAN, Esq.,  
SESSIONS, FISHMAN, ROSENSON & SNELLINGS, Esqs.,  
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New Orleans, Louisiana.

*Of Counsel.*



Filed June 9, 1962

UNITED STATES DISTRICT COURT, DISTRICT OF COLUMBIA

Civil Action No. —

[Title omitted]

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

CITY OF WASHINGTON,  
District of Columbia, ss:

Edward L. Merrigan, being duly sworn, deposes and says:

1. I am an attorney duly admitted to practice before the District Court of the United States for the District of Columbia, and I am the attorney for plaintiffs in this action. This affidavit is submitted in support of plaintiffs' motion for a preliminary injunction herein.

2. At the request and direction of the plaintiff banks herein, I have filed a Complaint for Declaratory Judgment and Injunction, the purpose of which is to restrain and enjoin defendant, the Comptroller of the Currency, from issuing a Certificate or Certificates authorizing the establishment and operation of one or more new branch banks of the Whitney National Bank of New Orleans in Jefferson Parish, Louisiana. At the same time, I filed a Motion for Preliminary Injunction to restrain the defendant from issuing any such certificate or certificates during the pendency of this action.

3. The basis of the aforesaid Complaint and Motions is that defendant Comptroller of the Currency is prohibited by Title 12 United States Code, Sections 36 and 1841, et seq. from authorizing the direct or indirect establishment of new branch bank or banks by the aforesaid Whitney National Bank in Jefferson Parish, Louisiana, and that said defendant's announced approval of such proposal and his announced purpose and plan to issue a Certificate or Certificates authorizing the establishment and operation of such new branch bank or banks in Jefferson Parish, Louisiana constitutes arbitrary and wilful abuses of his discretion in violation of the provisions of Title 12 United States Code, Section 27.

4. On October 27, 1961, the President of the Whitney National Bank of New Orleans, Mr. Keehn W. Berry, wrote

a letter to the shareholders of the said bank, announcing that the bank "had been working for some time to obtain the necessary approval of the Comptroller of the Currency . . . to the steps required to create a Holding Company into which the stock of the Whitney National Bank would be converted and that we then contemplated moving funds from the Whitney National Bank of New Orleans into the Holding Company for the establishment of a Whitney National Bank in Jefferson Parish." He then stated that "we now have the concurrence of the Comptroller of the Currency" to the initial steps of the proposed plan, and he proceeded to outline in detail the subsequent steps required to complete the maneuvers and camouflages adopted by the Bank in order to gain the defendant's final approval and certificate for establishment and operation of the new branch bank or banks. This letter concluded as follows:

"Insofar as the operation in New Orleans is concerned, this program is simply a corporate reorganization of the present Whitney National Bank of New Orleans. It contemplates no changes in personnel, management, or directorship. It contemplates no changes in the facilities of the bank in New Orleans. It contemplates no changes in the ownership or proportional shareholdings."

"The basic purpose of the program is to allow the Whitney organization in New Orleans to commence a Holding Company operation controlling a bank in East Jefferson Parish. . . ."

A copy of the said letter of October 27, 1961 is annexed hereto, made a part hereof and marked *Exhibit "A"*.

5. Thereafter, and on October 28, 1961, the very same President of the Whitney National Bank of New Orleans again wrote to the Bank's stockholders. In this letter, copy of which is annexed hereto, made a part hereof and marked *Exhibit "B"*, he stated:

"As we have already said to you, for more than two years we have been studying and weighing alternative methods of our serving our customers who live beyond the city limits or who have built plants or opened offices there. A year ago the Directors of your Bank authorized the officers to proceed to ob-

tain the necessary approval of the Comptroller of the Currency . . . to the action required to create a holding company into which the stock of the Whitney National Bank would be converted and which holding company would create and own in its entirety a new bank to serve that part of Jefferson Parish on the East bank of the Mississippi.

"We are firmly convinced, after careful consideration of the alternatives, that your common ownership of all of the Whitney National Bank of New Orleans stock and all of the stock of a Whitney National Bank in Jefferson Parish by a holding company to be owned by you is the soundest method of pooling all of the deposits of our customers and of our capital funds for their use and for the development of this community. From the depositors' point of view, those in the smaller bank will be assured of the same management which directs the large one without possibility of interruption. They will be assured of access to the large loan limits of the combined banks. They will have the security which arises out of the fact that the large and the small bank have identical ownership as well as management."

6. As alleged in the Complaint herein, Title 12 United States Code, *Section 36(c)(2) prohibits* a national banking association such as Whitney National Bank from establishing and operating new branches at any point within the State of Louisiana beyond the limits of the Parish of Orleans, where its main office is located, *unless*

"such establishment and operation are at the time authorized to State banks by the statute law of the State . . . by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State or State banks."

*Section 36(b)* then defines "branch" as follows:

"The term 'branch' as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State . . . at which deposits are received, or checks paid, or money lent."

Also, as alleged in the complaint, Louisiana law does not grant any authority, express or implied, to State banks to establish or operate branches "at any point within the State". On the contrary, the law of Louisiana prohibits banks with \$100,000. or more in capital from opening so-called "outside branches" beyond the parish (county) lines within which the State bank's main office is located.

Finally, as stated in the Complaint, the Bank Holding Company Act, upon which the said Whitney Bank was apparently pinning its endeavor to evade the restrictions of the "Branch Bank" provisions of the National Banking Act, specifically provides, as *Title 12 United States Code, Section 1846*:

*"Reservation of rights to States--*

*"The enactment by the Congress of this chapter shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has . . . with respect to banks, bank holding companies, and subsidiaries thereof."*

Said Bank Holding Company Act, as *Title 12 U.S.C. § 1845 (a)*, also makes it *unlawful* for a bank to invest any of its funds in the capital stock, or other obligations of a bank holding company of which it is a subsidiary, or of any other subsidiary of such bank holding company". The same section makes it "unlawful for a bank to make a loan, discount or extension of credit to a bank holding company of which it is a subsidiary or to any other subsidiary of such bank holding company".

Exhibit "A" hereto states on its face that Whitney National Bank, as part of the plan before the defendant herein for approval is planning to invest \$350,000. and later, an additional \$650,000. in a bank holding company of which it is to be or is a subsidiary and/or in another subsidiary of such holding company, to wit, the Whitney National Bank's proposed branch in Jefferson Parish, Louisiana.

7. Not only do the foregoing provisions of federal and state law expressly prohibit the direct or indirect establishment and operation of such new branch bank facilities by the Whitney National Bank of New Orleans, but the National Banking Act itself, *Title 12 U.S.C., Section 27* specifically and expressly empowers the defendant herein, the

Comptroller of the Currency; to "withhold from an association his Certificate authorizing the commencement of business, whenever he has reason to suppose that the shareholders have formed the same for any other than the legitimate objects contemplated by this chapter", which chapter, of course, includes Section 36, referred to hereinabove.

Exhibit "A" hereto states in its very first and second and last paragraphs, that defendant herein has been fully and consistently advised by Whitney National Bank of New Orleans that the entire basic purpose and intent of the proposal laid before defendant for approval was to defeat, circumvent or evade the legitimate objects of the Branch Bank restrictions of Section 36, contained in the National Banking Act, which restrictions, together with the statutes of Louisiana, prevented said bank from opening one or more branches in a new parish, to wit, Jefferson Parish, Louisiana.

8. In spite of the foregoing provisions of law, and in spite of his apparent knowledge of the underlying purposes and designs of the proposals submitted to his office by the Whitney National Bank of New Orleans, the Comptroller of the Currency has proceeded to grant a series of written approvals with reference to each step of such program, and he is now verily believed to be ready to issue momentarily his formal Certificate of Authority under *Title 12 U.S.C. § 27* to authorize final establishment and operation of the unlawful new Jefferson Parish branch facilities of the Whitney National Bank of New Orleans. Under date of May 18, 1962, defendant issued a written decision announcing his approval of further steps in the Whitney's proposal. He refers therein to his approval of prior steps therein on October 2, 1961. A copy of defendant's said decision is annexed hereto, made a part hereof and marked *Exhibit "C"*.

In the meantime, as *Exhibit "D"* hereto recites, defendant has apparently been stating to various banking organizations in other sections of the United States that the restrictions and prohibitions of *Section 36 of Title 12 of the United States Code* are personally objectionable to him and that he is aware of and apparently sympathetic to devices designed to avoid same. Defendant is also reported in said *Exhibit "D"* to have recognized, however, that only the Congress of the United States can lawfully repeal or amend such provisions of law.

9. During the past week, your deponent has been advised verbally by agents and employees of the defendant herein that the defendant "has completed his consideration of the Whitney Bank case and is now ready to issue, without any further proceedings, a certificate authorizing the Whitney National Bank to open in Jefferson Parish, Louisiana". These same agents and employees of defendant stated that the certificate will issue immediately upon the said Whitney's request therefor, and that, without any question at all, the defendant herein intends to issue the certificate.\*

10. The Complaint and the Motion for Temporary Restraining Order herein allege, and I verily believe, that after defendant issues his Certificate or Certificates to the Whitney National Bank, as threatened, plaintiffs will have no legal remedy effectively to prevent the establishment and operation of such new branch bank or banks in Jefferson Parish, Louisiana.

11. If defendant is not restrained immediately from issuing his Certificate or Certificates of authority to the said Whitney National Bank of New Orleans, Whitney Holding Corporation, or Whitney National Bank of Jefferson Parish, Louisiana, the said Bank will, as soon as it received defendant's said Certificate or Certificates, open for business and commence operation of one or more branch banks in complete and utter violation, evasion and contravention of both the Federal and State laws referred to hereinabove, all to the irreparable loss, injury and damage to the banking businesses of the plaintiffs, and each of them, as alleged in the Complaint herein, and such issuance by defendant will effectively deprive plaintiffs of any remedy against such unlawful, arbitrary and wilful action of the defendant.

s/ EDWARD L. MERRIGAN.

Sworn to and subscribed before me this 8th day of June, 1962.

s/ ROSE M. DENNIS,  
*Notary Public.*

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\* On June 8, 1962, however, General Counsel to defendant, when advised this suit would be filed, agreed to withhold the Certificate until this Court acts upon this motion.



Filed June 9, 1962

EXHIBIT "A"

WHITNEY NATIONAL BANK OF NEW ORLEANS

October 27, 1961

Keehn W. Berry  
President

TO WHITNEY NATIONAL BANK SHAREHOLDERS:

REORGANIZATION PROGRAM

Under date of July 17, 1961, I explained to you that we had been working for some time to obtain the necessary approval of the Comptroller of the Currency and the Federal Reserve Board to the steps required to create a Holding Company into which the stock of the Whitney National Bank would be converted and that we then contemplated moving funds from the Whitney National Bank of New Orleans into the Holding Company for the establishment of a Whitney National Bank in Jefferson Parish.

We now have the concurrence of the Comptroller of the Currency to the establishment of a Crescent City National Bank with a capital of \$280,000 and a surplus of \$56,000 and paid in undivided profits of \$14,000, or a total capitalization of the Crescent City National Bank of \$350,000. The steps needed to consummate the change in our capital structure will be as follows:

1. We propose to put \$350,000 of the capital funds of the Whitney National Bank into a Louisiana business corporation under the title—"WHITNEY HOLDING CORPORATION". The Whitney Holding Corporation will have an authorized capital of 1,120,000 shares of no par value stock. 5,600 of these shares will be issued to the Whitney National Bank of New Orleans for the \$350,000. The Bank will immediately distribute these shares to all of its shareholders on the basis of 1/20th of one share for each share of the 112,000 shares of the Whitney National Bank stock outstanding.
2. The Whitney Holding Corporation will cause the or-



ganization of the Crescent City National Bank contributing \$280,000 to capital, \$56,000 to surplus, and \$14,000 to undivided profits, and Whitney Holding Corporation will receive for that all of the authorized stock of Crescent City National Bank, being 112,000 shares of \$2.50 par value.

3. Crescent City National Bank will enter into a consolidation agreement with the Whitney National Bank of New Orleans. Whitney Holding Corporation will execute an agreement which will be a part of the consolidation agreement. The consolidation agreement will provide for consolidation under national banking law as follows:

- a. All of the stock of the Crescent City National Bank will be retained by Whitney Holding Corporation except qualifying shares which will be sold to directors for cash.
- b. Whitney National Bank shareholders will surrender all shares which will be cancelled and they will receive 9-19/20 shares of Whitney Holding Corporation for each share held. These shares, together with the dividend described in Section 1 above, will give each present Whitney shareholder, ten shares of Whitney Holding Corporation stock for each share of Whitney Bank stock now held.
- c. All assets and liabilities of Whitney National Bank of New Orleans will be consolidated into the Crescent City National Bank under the Charter of the Crescent City National Bank and under the name of the Whitney National Bank of New Orleans. The par value of the stock of Crescent City National Bank will be simultaneously increased to \$25.00 per share so that the capital structure of the new bank will be the same as that of the old.
- d. Dissenting shareholders of the Whitney National Bank of New Orleans will be entitled to a cash payment of the appraised value of the shares as provided by Federal Bank Law. In accordance with the same law, shares of Whitney Holding Corporation representing dissenting shareholders will be sold at public auction and the proceeds returned to the capital funds of Crescent City National Bank to the extent of funds used to pay the dissenting shareholders.

4. Upon appropriate notice and publication, the consolidation agreement will be submitted for approval by the shareholders of Whitney National Bank of New Orleans and shall become effective only upon the affirmative vote of not less than 2/3rds of the outstanding stock.
5. Upon completion of the consolidation Whitney Holding Corporation will own all of the stock, except directors qualifying shares, of the Crescent City National Bank (to be named Whitney National Bank of New Orleans). The outstanding shares of Whitney Holding Corporation will be 1,120,000 shares owned by all of the present Whitney Bank stockholders proportionately, except for dissenting shareholders.
6. The Crescent City National Bank (to be named Whitney National Bank of New Orleans) will provide \$650,000.00 to Whitney Holding Corporation with which Whitney Holding Corporation will cause to be created the Whitney National Bank in Jefferson Parish, receiving all stock therefor, being 20,000 shares having a \$25.00 par value. The initial capital structure will be \$500,000 capital, \$100,000 surplus, and \$60,000 undivided profits. Whitney Holding Corporation will immediately sell to directors qualifying shares for cash.
7. The Whitney Holding Corporation will register under and operate in accordance with the Bank Holding Company Act of 1956 and other applicable laws, under which it can acquire no additional banks without approval of the Board of Governors of the Federal Reserve. There are no present plans for additional acquisitions.

Insofar as the operation in New Orleans is concerned, this program is simply a corporate reorganization of the present Whitney National Bank of New Orleans. It contemplates no changes in personnel, management, or directorship. It contemplates no changes in the facilities of the bank in New Orleans. It contemplates no changes in the ownership or proportional shareholdings.

The basic purpose of the program is to allow the Whitney organization in New Orleans to commence a Holding Company operation controlling a bank in East Jefferson Parish to protect Whitney's competitive position in that area into which many of Whitney's present customers have moved.

This detailed outline of the main features of the con-

solidation program is sent to you in accordance with the prescribed procedure in the regulations of the Comptroller of the Currency.

Sincerely,

K. W. BERRY,  
President.

KWB:p.

Filed June 9, 1962

# EXHIBIT B

## WHITNEY NATIONAL BANK OF NEW ORLEANS

October 28, 1961

Keehn W. Berry  
President

### TO WHITNEY NATIONAL BANK SHAREHOLDERS:

You are hereby notified of a Special Shareholders' Meeting of the Whitney National Bank called by the Board of Directors to be held on November 29, 1961 at 12 o'clock noon at the offices of the Bank at 228 St. Charles Street, New Orleans, Louisiana.

The purpose of the meeting is to consider and determine by vote whether to ratify and confirm the Whitney Holding Corporation program by consolidating the Whitney National Bank into the Crescent City National Bank in New Orleans under the name of the former, and all matters incidental thereto.

We are enclosing a letter in accordance with the requirements of the United States Comptroller of the Currency which outlines in detail the proposed program. It is important to bear in mind that under the plan all authorized shares of the Whitney Holding Corporation will be distributed to you, the stockholders of the Whitney National Bank, in exchange for your presently held stock. You will then own the same proportionate interest as you now have in the Whitney National Bank in all the assets of the holding corporation, which then obviously includes all of the assets of the present Whitney National Bank. Control of the Holding Corporation management will rest as it should with the holders of a majority of the stock.

As we have already said to you, for more than two years

we have been studying and weighing alternative methods of our serving our customers who live beyond the city limits or who have built plants or opened offices there. A year ago the Directors of your Bank authorized the officers to proceed to obtain the necessary approval of the Comptroller of the Currency and the Federal Reserve Board to the action required to create a holding company into which the stock of the Whitney National Bank would be converted and which holding company would create and own in its entirety a new bank to serve that part of Jefferson Parish on the East bank of the Mississippi.

We are firmly convinced, after careful consideration of the alternatives, that your common ownership of all of Whitney National Bank of New Orleans stock and all of the stock of a Whitney National Bank in Jefferson Parish by a holding company to be owned by you is the soundest method of pooling all of the deposits of our customers and of our capital funds for their use and for the development of this community. From the depositors point of view, those in the smaller bank will be assured of the same management which directs the larger one without possibility of interruption. They will be assured of access to the large loan limits of the combined banks. They will have the security which arises out of the fact that the large and the small bank have identical ownership as well as management.

We therefore elected to use a holding company rather than to get a group of stockholders to form an affiliate in Jefferson Parish. An affiliate by law must depend on ownership of a majority of the stock in the Jefferson Parish bank by Whitney Bank stockholders. Affiliate relationship can be suddenly terminated if stock ownership in the Jefferson Parish bank changes over a period of time until control ceases to be in the stockholders of the large New Orleans bank. The large bank cannot control those changes in stock ownership, and under the law when the control ceases to be in the stockholders of the large bank the two banks cannot have common officers or directors. As we view it, the change of ownership of the stock could be very embarrassing to either or both banks,—even to the extent of having a bank which we no longer control still bearing the name "Whitney National Bank".

Under the holding company approach the relationship is completely owned by the stockholders of the holding com-

pany who will be all the present stockholders of the Whitney National Bank and their successors.

By reason of the common ownership of the two banks in a holding company there can arise no conflict of interest between them as there can between affiliated banks. There will be no minority stockholders to be affected.

From the customer point of view there will be no conflict of interest arising out of the manner in which the customer sees fit to divide his business between the commonly owned banks in the two parishes. He will have the full benefits of a relationship with the large bank and its officers.

Because of the permanent relationship between the large and the smaller bank, the smaller one can operate safely with a smaller capitalization.

The corporate identity of the seventy-eight year old Whitney National Bank with the prestige and asset values inherent therein, is fully preserved under the holding company procedure, as is your undiluted ownership thereof.

Finally, this holding company group broadens banking possibilities for the future from the point of view of our shareholders. Even more important it will give metropolitan New Orleans the soundest form of banking unit which can accumulate and pool banking resources in this community where they can be used to greatest advantage in the further development of the entire area.

For the reasons stated, we strongly recommend that you support your Directors' proposal for the establishment of the Whitney Holding Corporation in accordance with the Plan enclosed herewith. Please sign and return promptly the enclosed proxy whether or not you plan to attend the meeting in person. If you attend, you may still vote in person.

Sincerely yours,

K. W. BERRY,  
*President.*

Filed June 9, 1962

Exhibit "C"

TREASURY DEPARTMENT  
Comptroller of the Currency  
Washington 25, D. C.

DECISION OF COMPTROLLER OF THE CURRENCY JAMES J. SAXON  
ON THE APPLICATION TO CONSOLIDATE WHITNEY NATIONAL  
BANK OF NEW ORLEANS, NEW ORLEANS, LOUISIANA, AND  
CRESCENT CITY NATIONAL BANK, NEW ORLEANS, LOUISIANA.

STATEMENT

Application has been made to the Comptroller of the Currency for permission to consolidate the Whitney National Bank of New Orleans, New Orleans, Louisiana, and the Crescent City National Bank, New Orleans, Louisiana.

Application had previously been made to this office to organize two new national banks: one, located in New Orleans, to be known as the Crescent City National Bank and the other, located in Jefferson Parish, to be known as the Whitney National Bank in Jefferson Parish. Substantially all of the stock of the new banks would be acquired by the proposed Whitney Holding Corporation.

This office approved the formation of the two banks on October 2, 1961. Subsequently, on May 3, 1962, the Board of Governors of the Federal Reserve System granted approval to the Whitney Holding Corporation to acquire substantially all the shares of these banks.

We find the proposal to consolidate to be in the public interest. The application, therefore, is approved effective on or after May 24, 1962.

JAMES J. SAXON,  
*Comptroller of the Currency.*

Dated: May 18, 1962

Filed June 9, 1962

### Federal Law Needed?

#### Comptroller Saxon Criticized in Illinois for Statements on Branch Banking

Illinois bankers, the majority of whom have strongly objected to any and all proposals for branch banking in the state, lashed out at Comptroller James J. Saxon last month because of his recent statements concerning federal legislation affecting branch banking.

Critical statements were issued by the president of the Illinois Bankers Association, the IBA's newly elected executive vice president, and by members of various groups as they assembled for annual meetings.

IBA President Jacob W. Myers (pres., Corn Belt Bank, Bloomington) reaffirmed the association's official opposition to branch banking. He stated that the IBA would fight any national legislation that would permit *national* banks to establish branches, and he also said that any effort to legalize branch banking through state legislation also would be strongly opposed.

Mr. Myers, referring specifically to Comptroller Saxon's suggested branching law for national banks, stated:

"This is another example of encroachment by the federal government in the field of state authority.

"The bankers of Illinois bitterly resent this type of federal intervention in an area which has traditionally been a prerogative of the state."

The Comptroller's statements, which have caused him so much embarrassment in his home state (he was an attorney for the First National of Chicago prior to his appointment as Comptroller), were made late in January in connection with proposed "acquisitions" by New York City banks in adjacent counties.

The Comptroller, in denying these acquisitions, stated in a letter of explanation to the board of governors of the Federal Reserve System that he was doing so because he felt that "massive acquisitions" by New York City banks were not the proper ways for them to expand into adjacent counties. He regretted, he said, that the laws of New York,



as well as the laws of many other states, artificially inhibit normal proper and publicly beneficial growth and expansion through branching. Because of these restrictions, he said, banks are forced to resort to "unusual means in order to some way accommodate banking growth and expansion."

Under these circumstances, he said, "we believe it to be imperative that the Congress promptly be asked to amend Section 36 of the National Bank Act relating to branches so as to liberalize substantially the present authority and thereby also to develop a more consistent statutory policy in respect to branching in all of the states."

The Comptroller also stated "The Bank Holding Company Act should also be amended in at least two major respects. (a) To make clear that this Act supersedes *all state statutes* now or hereafter in force, and (b) to eliminate exemptions presently in the Act so as . . . to assure that no organization owning banks is free of regulation pursuant to the Act as is presently the case."

Roland Blaha, the IBA's new executive vice president, stated that he was strongly opposed to the Comptroller's proposal on the grounds that it would have the effect of superseding the constitution of the state of Illinois. The authority of the state legislature would be by-passed, he said, and a peoples' referendum on the problem would be meaningless.

If the Comptroller's recommendations should be enacted into law, said Mr. Blaha, who had served as Illinois's supervisor of banks before accepting his new post, then national banks could establish branches in Illinois, but it would be 1965 before state banks in Illinois could be placed on an equal footing.

A statement issued by James C. Downs, chairman of the Illinois County for Branch Banking, supported Mr. Blaha's stand on the Comptroller's proposal.

Although the council would continue to work for branch banking legislation in Illinois, Mr. Downs stated that "we feel that such action should be taken at the state level. Our own state legislators should no longer delay," he said, "in taking the initiative in *advance of federal action* so that the people of Illinois may make *their own* decision in a state-wide referendum."

The council has been advocating limited branch banking

for the state, permitting any bank to establish branches within 15 miles of its home community, but not within one mile of an existing bank.

IBA members at group meetings also reaffirmed the association's position on branch banking and adopted resolutions criticizing the Comptroller's proposal. Such a proposal, they said, was an "usurpation of the laws of the state of Illinois."

The IBA position also was enthusiastically endorsed by J. Ross Humphreys, who is scheduled to succeed Mr. Myers as IBA president next month. Said Mr. Humphreys, who is president of Chicago's Central National Bank:

"Such an action would completely ignore our state law and void certain provisions of our state constitution.

"The citizens of Illinois, by public referendum in 1924, voted to outlaw branch banking, and efforts in the last two sessions of our state legislature to legalize branch banking have been overwhelmingly defeated."

NEW YORK—The Bank of New York promoted five officers and appointed four new officers March 12. They are Morgan E. McMonegal, advanced to assistant vice president; George W. Scott and Harold G. Wilson, to trust officers; Joseph A. Agolia, to assistant trust officer; William J. Caird, to assistant comptroller; Donald M. Long and Wesley V. Taylor, to assistant secretaries; Walter H. Cushman, to manager, trust operations; and James G. Davine, to manager, securities.

#### In finance

\*New 'branch banking' battle flares, as Oklahoma issue goes to Fed.

A battle over "branch banking"—with overtones of national significance—flared up this week in Oklahoma. The state has a ban on branching, with the exception of so-called banking "facilities" within 1,000 ft. of a main office. But First National Bank & Trust Co., Oklahoma City's largest bank, has applied to the Federal Reserve Board for permission to get around the law by setting up a bank holding company. Fed. hearings are slated to begin June 5.

First National's partner in the transaction is a tiny bank in the southeastern corner of the state, Idabel National Bank, which has only about \$5-million in assets. Oklahoma

bankers say that a green light for First National would touch off a flood of other holding company applications, including several from banks now bitterly opposed to First National's deal. First National itself makes no secret of its desire to build a statewide holding company system.

The issue has national importance because of the Fed's apparent tendency to override state laws in ruling on bank expansions in New York and in Louisiana [BW May 12 '62 p. 32]. In the latter case, the Fed allowed Whitney National Bank, largest in New Orleans, to expand into a neighboring parish through the holding company route, despite a state ban on branching.

Meanwhile, the celebrated dispute between the Justice Dept. and two Philadelphia banks. Philadelphia National and Girard Trust Corn Exchange—which want to merge to form the city's largest bank—moved into the Supreme Court. For the first time, the court will be asked to spell out just how the Sherman and Clayton Acts apply to banking.

### Great Northern Paper pledges help to Georgia pulp and paper group

In 1957, a group of back-country Georgia bankers and landowners set out to put themselves into the pulp and paper business.

This week, after a five-year campaign in which roughly \$22 million in stock was sold door-to-door across the state, the promoters were close to success—and had some big profits to show for it. They had one of the nation's most highly automated kraft-ligerboard paper mills well under construction, a pledge of \$15-million in new equity from Great Northern Paper Co., plus assurance of another \$25-million in long-term debt from institutional lenders.

The idea of Southern Land, Timber & Pulp Corp. was to put some land into a company, raise money to buy more timberland, and provide pulp to the booming Southeastern paper market. Says Pres. John J. Neely Sr., "We didn't think we could raise money for a mill—it just snowballed." The company now has 150,000 acres of land, of which only 25,000 acres were contributed by the original promoters.

Southern Land shares were sold intrastate by Forestry Service, Inc., a company that Neely controls. Shares were sold partly on an installment basis—with up to 36 months

to pay. Of the \$22-million stock sale some \$6.6-million is still due the company. Forestry Service, which also has a contract to manage Southern Land for 15% of its profits, took in about \$3.6-million in commissions on the sale of securities. The Securities & Exchange Commission now says that some of the shares may have been sold outside the state so the company is registering to clear up any possible taint.

Southern Land at first tried to promote a \$45-million tax-exempt bond issue by Early County, Ga., which would have built the mill and leased it to Southern Land. But the issue didn't sell, and Great Northern then entered the picture. GN agreed to put up \$15-million in equity, and, in return, received half the project. Maine-based Great Northern now wholly in printing papers, gets product diversification by its move into linerboard, and geographic spread as well.

#### Sale and leaseback of buildings ups banks' lending power \$250-million

Banks around the country are swamping Marine Midland Corp., New York's big 14-bank holding company, with requests for details on a sale-leaseback deal that expanded its lending potential by nearly \$250-million, while adding only \$10-million in new capital.

Marine Midland sold about \$28.8-million of its banking properties to a wholly owned subsidiary set up for that purpose, and then leased them back. It financed the entire transaction through long-term borrowing from a syndicate of 23 lending institutions, including the Ford Foundation. In addition, the lenders have pledged another \$8.2-million to finance future sale-leaseback deals.

On its books, the holding company cleared \$10-million—the difference between book value and selling price—and counted this as additional capital. The big gain, though, came in freeing from restriction the capital it had invested in real estate: The Federal Reserve doesn't recognize such capital in determining a bank's lending potential. But now the full \$30-million received for sale of the real estate is available as a lending base, and applying a yardstick of 8 to 1—loans to capital—Marine Midland figures it has added nearly \$250-million to its lending capacity.

The deal is similar to, but a lot more complicated than the sale-leaseback deal of Cleveland's Union Commerce Bank

last year [BW Nov. 11 '61 p. 117]. Marine Midland's officers, in fact, met twice a week for two years working it out, and over 6,500 signatures were needed for the final documents. But indications are it will continue sale-lease-back deals—both on existing properties and on any new unit bank properties it might acquire. All told, Marine Midland may sell another \$20-million in properties this way over the next few years.

Filed June 19, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

MOTION OF WHITNEY NATIONAL BANK IN JEFFERSON PARISH  
TO INTERVENE AS A DEFENDANT

Whitney National Bank in Jefferson Parish respectfully moves the Court pursuant to Rule 24 of the Federal Rules of Civil Procedure for leave to intervene as a defendant in this action, in order to assert the defenses in its proposed answer to the plaintiffs' complaint, a copy of which is hereto attached. The grounds for this motion are that:

(1) The relief sought by plaintiffs in this action is a judgment declaring that defendant is prohibited by law from issuing, and an order enjoining him from issuing, "to t. Whitney National Bank, and or the Whitney Holding Corporation and or the Whitney National Bank of Jefferson Parish, a Certificate or Certificates of Authority authorizing them or any of them to establish new branch bank facilities in the name of Whitney National Bank or otherwise in Jefferson Parish, State of Louisiana." Insofar as plaintiffs might seek to prevent defendant from issuing to Applicant for Intervention a Certificate of Authority to commence business as a national banking association, applicant for intervention has a substantial and direct interest in the subject matter of the action.

(2) The representation of the interest of applicant for intervention may be inadequate, and applicant for intervention may be bound by a judgment in this action.

(3) The defenses of the applicant for intervention, as set forth in the attached pleading, and the main action have question of law and fact that are in common.

(4) Intervention by the applicant will not delay or prejudice the adjudication of the rights of the original parties.

Applicant for intervention has noted the pendency of plaintiff's motion for preliminary injunction and will, if granted leave to intervene, file its opposition thereto in due course.

HAMILTON CAROTHERS,  
701 Union Trust Building,  
Washington 5, D. C.

MALCOLM LOGAN MONROE,  
Whitney Building,  
New Orleans 12, Louisiana.

June 19, 1962.

Filed June 20, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

**AFFIDAVIT**

James J. Saxon being duly sworn deposes and says:

1. I am Comptroller of the Currency, duly appointed, qualified and acting as said officer.

2. I have access to and control over all of the records of the Office of the Comptroller of the Currency relating to this matter.

3. The purpose of this affidavit is to place before the court a factual account of the events leading up to the formation of Whitney Holding Corporation, Crescent City National Bank and Whitney National Bank of Jefferson Parish. The complaint in this action has set forth these events in a manner which completely distorts and misinterprets the actions taken in connection with the matter by myself and my predecessor in office, the Honorable Ray

M. Gidney. The following is an account of the steps leading up to the formation of the Whitney National Bank of Jefferson Parish (hereafter referred to as Whitney Jefferson) the opening of which plaintiff seeks to enjoin in this action.

In November of 1960, Mr. Keeln W. Berry, President of Whitney National Bank of New Orleans, (hereafter referred to as Whitney New Orleans) visited Mr. W. M. Taylor, then a Deputy Comptroller of the Currency, and engaged in preliminary discussions concerning the competitive situation of Whitney New Orleans in the City of New Orleans and its surrounding suburbs. Mr. Berry pointed out that a great many of his bank's depositors reside in Jefferson Parish and that there was a great demand from the bank's customers for additional facilities in Jefferson Parish. He pointed out that his largest competitor, National Bank of Commerce in New Orleans, was presently operating a bank and three branch banks in Jefferson Parish under the name of National Bank of Commerce in Jefferson Parish. This bank was an affiliate of the National Bank of Commerce in New Orleans and was controlled by the same stockholders with an interlocking Board of Directors and Executive Officers. See Statement of Condition attached. (Exhibit 1) Mr. Berry returned in June of 1961, bringing with him Mr. Malcolm L. Monroe, Director and Attorney for the bank, and extended discussions were held with Mr. Gidney, Mr. Taylor and members of the Comptroller's legal staff. He further pointed out that another competitor was operating on both sides of Jefferson Parish lines by means of separate banks under common ownership and control. He cited the case of one of the plaintiffs in this very action, Merchants Trust and Savings Bank and the American National Bank of Louisiana, both of which banks he alleged were controlled by Mr. Louis Roussel by means of controlling stock interests. See the affidavit of Mr. James J. Gilly dated June 16, 1962, submitted in opposition to this motion.

In view of the fact that their competitors, by means of these affiliate banks, had expanded into Jefferson Parish, the Whitney National wished to explore with the Comptroller whatever legal means were available for a like expansion into this growing area, which needs additional banking facilities. The formation of an affiliate bank was discussed and the formation of a holding company was also



discussed. The bank management felt that a holding company which would own 100% of the stock of both the old bank and the new bank would be preferable to the formation of an affiliate of which the controlling stock would be held by the same persons who control Whitney New Orleans, but which, in view of the wide stock distribution of Whitney New Orleans, would invariably have a minority of stockholders who did not own stock in both banks. The existence of the minority stock interest in each bank, which did not hold corresponding shares in the other, was considered by the Whitney management to be an undesirable situation because it could conceivably hamper the most efficient and effective day-to-day operation of the two banks. Since the same group would be managing both banks, it was thought that situations could arise in which it would be impossible for the interests of two different groups of minority stockholders to be fully protected. For this reason, the Whitney management, as was their right and prerogative elected to use a holding company for the purpose of establishing a new bank in Jefferson Parish.

At all times the applicable Louisiana statutes forbidding the establishment of branch offices across parish lines were fully considered and there was no suggestion that the formation of a holding company would be in any way clandestine or evasive. The stock of Whitney New Orleans was very widely held by a list of over 1,400 stockholders, none of whom owned more than 10% of the outstanding stock. It was evident to everyone concerned that the holding company could not be formed without full and complete approval by the shareholders of Whitney New Orleans and by the Comptroller and the Federal Reserve Board.

4. The Whitney management having decided to submit to its shareholders a proposal to form a holding company and to establish a new bank in Jefferson Parish made the following proposal to the Comptroller: The Whitney management would make application to the Board of Governors of the Federal Reserve System for the approval of the formation of a holding company to be known as Whitney Holding Corporation. Whitney Holding Corporation would become a bank holding company by acquiring substantially all of the voting stock of a proposed new bank, Crescent City National Bank, into which would be consolidated the existing Whitney National Bank of New Orleans, under the charter of Crescent City National Bank, which title would

be changed to Whitney National Bank of New Orleans. By virtue of this procedure, any dissenting stockholders would be fully protected. Under the provisions of 12 U.S.C. 215 (d) any stockholder who dissents to a consolidation has the right to have his shares appraised by disinterested appraisers and to receive the appraised value in cash. It is interesting to note that to date not a single stockholder has asked for appraisal of his shares. Under the terms of the consolidation, shareholders of Whitney National would receive shares of Whitney Holding Corporation in place of their old shares of Whitney National. An application for a new bank to be located in Jefferson Parish and to be called Whitney National Bank of Jefferson Parish would be made to the Comptroller. The stock of this new bank would be entirely owned, with the exception of directors' qualifying shares by Whitney Holding Corporation.

5. The usual full field investigation of the applications was carried out over a period of several months by the Comptroller's examiners. Competitor banks were contacted and their views noted in the investigation reports in accordance with the usual practice.

6. By letters dated October 3, 1961, former Comptroller Gidney gave preliminary approval to the formation of Crescent City National Bank, and the formation of Whitney Jefferson subject to the grant of the approval of the Federal Reserve Board of the formation of the holding company for the purpose of acquiring the new Whitney New Orleans and Whitney Jefferson, as required by the Bank Holding Company Act.

7. Under the provision of Section 3 (b) of the Bank Holding Company Act (12 U.S.C. 1842), the Board was required to solicit the views of the Comptroller on the application of Whitney Holding Corporation to become a bank holding company by acquiring the stock of one or more national banks. If any state bank had been involved, the Board would have been required to similarly solicit the views of the State Banking Commission. If the view of the Comptroller or the State Banking Commissioner is negative, the Board is required by Section 1842 to call a public hearing on the application.

8. Under date of April 11, 1961, Comptroller Gidney advised the Board that he had no objections to the application of Whitney Holding Corporation. Although not required to do so by the statutes, the Federal Reserve Board,

pursuant to its rules (Exhibit 2), caused to be published in the Federal Register under date of November 2, 1961, a notice of hearing on the application of Whitney Holding Corporation for prior approval to become a bank holding company and invited anyone interested in said application to appear and testify at such hearing which was to be held on January 17, 1962. A copy of said notice of hearing is attached hereto and marked Exhibit 3. At the hearing Mr. Keehn W. Berry and Mr. Malcolm Monroe testified for the proponents and Mr. Louis J. Roussel, Clem H. Sehrt, and Victor J. Passera, President of the National Bank of Commerce in Jefferson Parish, testified in opposition. A copy of the transcript is attached hereto and marked Exhibit 4.

On May 3, 1962, the Board of Governors rendered its decision and order approving the application of Whitney Holding Corporation for permission to become a bank holding company by acquiring the stock of Crescent City and Whitney Jefferson. In a fourteen-page opinion, the Board of Governors explored the necessity and desirability of the formation of the holding corporation and of the new bank in Jefferson Parish. The statutory factors of the financial history and condition of the holding company and the banks concerned, their prospects, the character of their management, the convenience needs and welfare of the community and area concerned, and whether or not the effect of the acquisition would be to expand the size and extent of the bank holding system involved beyond limits consistent with adequate and sound banking, the public interest and the preservation of competition in the field of banking, all were considered. Of necessity, the Board also considered the question of whether or not the formation of the holding corporation and its acquisition of Whitney Jefferson would be legal in the state of Louisiana. In this connection, the Board reached the following conclusion:

"In this aspect, the pending proposal to establish banking facilities in East Bank through the holding company device is due to the natural and legitimate desire of a bank in an expanding metropolitan area to furnish its services more conveniently to customers situated in a section that, although outside the corporate limits of Orleans Parish, is realistically an integral part of the metropolitan economy. The laws of Louisiana do not prohibit expansion of a banking or

ganization by this means. In the judgment of the Board, this phase of the proposal is a proper expression of the character of the American business system—in some respects, in fact, it is a matter of economic self-defense—and ought not to be frustrated unless it involves effects significantly detrimental to the public interest."

A copy of the Board's decision and the dissenting opinion of Governor Robertson is attached hereto and marked Exhibit 5.

9. Previously, on November 29, 1961, the holders of more than two-thirds of the stock of Whitney New Orleans, had approved the entire transaction including the formation of the holding company, the formation of the two new banks, Crescent City and Whitney Jefferson, and the consolidation of Crescent City with Whitney New Orleans. All steps in the transaction had previously been clearly spelled out in a letter to stockholders dated October 27, 1961, a copy of which is attached hereto and marked Exhibit 6.

10. On May 18, 1962, the Comptroller issued his approval to the consolidation of Whitney New Orleans with Crescent City under the title of Whitney National Bank of New Orleans. The final steps for the completion of the formation of Whitney Holding Corporation and the Crescent City National Bank and the consolidation were all accomplished on May 24, 1962, and the new bank in New Orleans commenced business on May 25, 1962.

11. After the completion of the above and on the same day, Whitney Holding Corporation completed the organization of Whitney Jefferson by purchasing all of its stock except directors' qualifying shares in exchange for \$650,000. The Articles of Association and Certificate of Organization had been previously executed. Bylaws were adopted and the directors and officers elected. A permanent location has been purchased and temporary quarters across the street on 4407 Jefferson Highway have been leased. All that remains to be done to enable Whitney Jefferson to commence business is the issuance of the Comptroller's Certificate of Authorization and the opening of its doors.

12. Before issuing his preliminary approval on October 3, 1961, of the organization of Whitney Jefferson, former Comptroller Gidney, in accordance with his statutory duty, considered the character of the management, the proposed

capital structure, the prospects of the new bank, and the other banking factors which must be considered before authorizing a new banking institution. Because of the fact that a holding company was involved, former Comptroller Gidney conditioned his approval upon the authorization of the Federal Reserve Board to the transaction. This consent and authorization having been rendered on May 3, 1962, the deponent's duty is to issue the Certificate of Authority to Whitney Jefferson since the organizers have faithfully executed all steps and fulfilled all requirements necessary for the organization of a new bank. In order that there may be no question about the propriety of his action, the deponent has made an independent review of the merits of the Whitney Jefferson application. Deponent is fully in accord with the conclusions reached by former Comptroller Gidney that all of the banking factors relating to the application are favorable and that the new bank will serve a useful and constructive purpose in the community.

13. Despite the continued statements of the plaintiffs to the contrary, there is no branch bank involved in these proceedings. There has been no request for a branch of any bank. A new affiliate bank for the Whitney National Bank in New Orleans has been approved. With respect to the allegations in the complaint that the prospective business of the plaintiffs from Jefferson Parish will be damaged by the new bank, this must be answered by the observation that the presence in Jefferson Parish of two New Orleans banks, through their affiliates, plaintiff Merchants Bank and Trust Company and the National Bank of Commerce in Jefferson Parish, already has caused such damage, if any to be incurred. To deprive Whitney New Orleans of the right to have an affiliate in Jefferson Parish, would be, in my opinion, to unfairly discriminate against Whitney New Orleans.

14. The plaintiff Guaranty Bank and Trust Company operates five parishes away and will not be in any affected by banking operations in the metropolitan area of New Orleans, including Jefferson Parish.

15. Plaintiffs, in their complaint, have endeavored to create an impression that the former Comptroller and the present Comptroller somehow have engaged in a sinister conspiracy with the Whitney management to evade the law. The entire record in this matter shows that all applications were processed in the normal manner and according to the same rules and policies as many similar applications being

processed during the same period. The charge that the branch banking laws are being evaded is completely without foundation as is conclusively demonstrated by the points and authorities submitted on behalf of the defendant.

/Signed/ JAMES J. SAXON.

Subscribed and sworn to before me, this 20th day of June, 1962.

Signed/ HELEN CRIST CRAVER.

My Commission Expires Sept. 30, 1966. Seal of Notary.

Filed June 20, 1962

DEFENDANT SAXON EXHIBIT 1

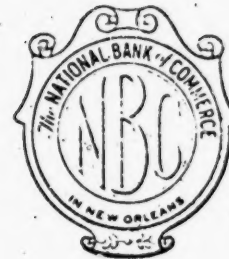
THE NATIONAL BANK  
OF COMMERCE  
*In New Orleans*



STATEMENT OF CONDITION

DECEMBER 31, 1961





**STATEMENT OF CONDITION**

**DECEMBER 31, 1961**

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*(Taken from Dollar file)*

*Ex 1*

COMMERCIAL ACCOUNTS

PERSONAL ACCOUNTS

COMMERCIAL LOANS

AUTOMOBILE LOANS

REAL ESTATE MORTGAGE LOANS

PERSONAL LOANS

HOME IMPROVEMENT LOANS

ACCOUNTS RECEIVABLE LOANS

SAVINGS DEPARTMENT

TRUST DEPARTMENT

FOREIGN DEPARTMENT

TRAVELERS CHEQUES

GUARANTEED CHECKS

SAFE DEPOSIT VAULTS

INVESTMENT SERVICE DEPARTMENT

DIRECTORS AND MEMBERS OF  
THE ADVISORY BOARD

EARL G. BATEMAN\*

*Owner, Bateman Drilling Co.*

CLAY W. BECKNER

*President, Jos. Rathborne Land & Lumber Co., Inc.*

BRUCE K. BROWN

*Business Consultant*

WILLIAM J. CHILDRESS\*

*President, Apex Sales Company*

LOUIS H. CLAY

*Chairman, Southern Ford Tractor Corporation*

CHARLES I. DENECHAUD, JR.\*

*Attorney-at-Law*

HARRY M. ENGLAND\*

*President, Gulf Bottlers, Inc.*

PARRISH FULLER

*Forest Products*

HERMANN GELPI

*Vivian J. Gelpi Co.*

EDWIN A. GEOGHEGAN

*Executive Vice President  
Hunt Foods and Industries, Inc.*

IRA B. HARKEY

FRANK B. HAYNE\*

*President, Nola Oil Co., and Nola Ice Co., Inc.*

A. J. HIGGINS, JR.\*

MAYER ISRAEL

*President, Israel Realty Co., Inc.*

PAUL F. JAHNCKE, JR.

*President, Jahncke Service, Inc.*

ARTHUR L. JUNG, JR.

WALLACE C. KEMPER

*President, Southdown, Inc.*

VICTOR J. KURZWEG, JR.

*President, Consolidated Companies, Inc.*

ALBERT V. LABICHIE\*  
*President, Labichie & Inc.*

L. J. LAUTENSCHLAEGER\*  
*Attorney-at-Law*

PAUL MALONEY, JR.  
*President, Maloney Trucking & Storage, Inc.*

EUGENE M. MCCARROLL  
*Executive Vice President*

RENE MERIC\*  
*Broker*

JOHN OULLIBER  
*President*

A. Q. PETERSEN

GEORGE PLANT  
*President, Plant Shipping Co., Inc.*

AZZO J. PLOUGH\*  
*Attorney-at-Law*

SHELLEY SCHUSTER  
*Chairman of the Board*  
*Transoceanic Shipping Company*

PERCY H. SITGES  
*Chairman of the Executive Committee*

JEAN MASON SMITH  
*Ferrier, Mason Smith & Company*

JAMES M. TODD  
*Consulting Engineer*

HARRY S. VERLANDER\*

RICHARD L. VOELKER, JR.  
*Attorney-at-Law*

ROBERT M. WALMSLEY, III  
*President, Continental Barges, Inc.*

L. KEMPER WILLIAMS  
*Williams, Inc.*

WM. AUGUST WORNER\*  
*Harrison Drug Center*

\*Members of the Advisory Board

(see Office -)

EX 1

# THE NATIONAL BANK OF COMMERCE

## IN NEW ORLEANS

CONDENSED STATEMENT OF CONDITION AS OF DECEMBER 31, 1961

### RESOURCES

Cash on Hand and Due from Banks	\$ 58,565,452.33
U. S. Government Securities	58,922,005.57
Obligations of U. S. Government Instrumentalities	1,003,658.30
Stock in Federal Reserve Bank	579,000.00
Municipal Bonds	15,537,514.75
Other Bonds	1,842.65
Loans and Discounts	124,453,479.60
Special Call Loans	2,750,000.00
Customers' Liability on Acceptances	68,356.85
Branch Bank Buildings and Leasehold Improvements	861,393.20
Furniture and Fixtures	664,349.56
Stock, Gravier Improvement Co., Inc.	500,000.00
Stock, Tulane Branch Corporation	300,000.00
Accrued Interest on Bonds and Loans, and Other Assets	1,392,065.34
	<u>\$265,590,118.15</u>

### LIABILITIES

Demand Deposits	\$178,844,857.69	
Savings Deposits	38,268,852.51	
Other Time Deposits	<u>25,548,820.87</u>	
Total Deposits		\$242,662,531.07
Liability on Acceptances	189,061.42	
Less: in Portfolio	<u>104,941.41</u>	84,120.01
Dividend Payable Jan. 2, 1962		264,000.00
Discount collected but not earned		692,067.92
Reserve for Taxes, Interest and Expenses		<u>1,635,458.41</u>
TOTAL LIABILITIES		\$245,338,177.41
Capital Stock		
(660,000 Shares, \$10 Par)	\$6,600,000.00	
Surplus	12,400,000.00	
Undivided Profits	<u>1,251,940.74</u>	
Total Capital Funds		<u>\$ 20,251,940.74</u>
		\$265,590,118.15

Contingent Liability on Letters of Credit Issued but not drawn against \$1,766,879.19

MEMBER FEDERAL DEPOSIT INSURANCE CORPORATION

## OFFICERS

JOHN OULIBER  
*President*

PERCY H. SITGES  
*Chairman of the Executive Committee*

EUGENE M. MCCARROLL  
*Executive Vice President*

CLEBERT C. SMITH  
*Executive Vice President*  
*Correspondent Banking*

*Senior Vice Presidents*

THOS. F. REGAN.  
FRANCIS C. DOYLE

JOHN E. WAX  
*Vice President and Comptroller*

J. WENSLES PARRA  
*Vice President and Cashier*

*Vice Presidents*

EDWARD J. DOBARD

W. J. DREZ

JOS. P. DUFOUR

IRWIN GLASER

V. GORDON ISAACSON

JOSEPH J. KNECHT

GEORGE J. LARMANN

RENE J. LAZARE

JOSEPH G. LIER

R. CHARLES STRAIN

JOSEPH C. WHITE  
*Vice President and Secretary to the Board*

*Assistant Vice Presidents*

FRANK J. BASILE

J. KENNETH BUTLER

DANIEL B. LE GARDEUR

*Assistant Cashiers*

C. F. ANDRESSEN  
BRUCE A. BARKER  
PHILIP J. BECKER  
EMMET M. BLUM  
E. F. DEFOURNEAUX  
T. C. DOWLING  
MILTON F. FOGARTY  
HAROLD S. FORD  
CHARLES E. KEENER  
B. J. LEGETT  
THOS. A. MASILLA  
J. S. MIDDLETON  
M. C. RYAN  
C. W. SANDERS  
SAM C. TOURNILLON  
HARRY E. WOODS  
MELVIN J. ZIEGLER

**Advertising and Public Relations**

ROBERT D. HESS, *Assistant Vice President*

**AUDITING DEPARTMENT**

PAUL MUEHLEMAN, *Manager*

**FOREIGN DEPARTMENT**

E. G. JANÉ, *Vice President*  
LAWRENCE J. LAURIE, *Assistant Cashier*

**PERSONAL LOAN DEPARTMENT**

M. J. ROUSSEAU, JR., *Vice President*  
F. PINOGES, *Assistant Vice President*  
A. F. FINNEGAN, *Assistant Cashier*

**SAFE DEPOSIT DEPARTMENT**

HENRY A. DESDIER, *Manager*

**SAVINGS DEPARTMENT**

MRS. DOROTHY A. PUNEKY, *Manager*

**TRUST DEPARTMENT**

R. J. EMMER, *Trust Officer*  
JOHN E. MORGAN, *Trust Officer*  
KENNETH J. LE BLANC, *Assistant Trust Officer*



## HEAD OFFICE

BARONNE AND COMMON STREETS

*Customers' Parking Garage**Commerce Building - 819 Gravier St.*

## BRANCHES

## CANAL STREET BRANCH

1501 CANAL STREET

W. W. ROOKER JR., *Assistant Vice President*W. V. GRAFF, *Assistant Cashier*

## CARROLLTON BRANCH

3201 S. CARROLLTON AVENUE,

FRANK A. BROWN, *Vice President*N. F. BELLONI, *Assistant Cashier*

## DRYADES MARKET BRANCH

1529 DRYADES STREET

V. A. DONAHUE, *Assistant Cashier*

## FRENCH MARKET BRANCH

941 DECATUR STREET

D. R. HANEMANN, *Assistant Cashier*

## GEN. MEYER BRANCH

4800 GEN. MEYER AVENUE

EUGENE J. CASTILLE, JR., *Manager*

## GENTILLY WOODS BRANCH

4525 CHEF MENTEUR HIGHWAY

GEORGE J. RUHLMAN, JR., *Assistant Cashier*

## MAGAZINE STREET BRANCH

3200 MAGAZINE STREET

J. HARRISON HUGHES, *Assistant Cashier*

## ST. CHARLES - JACKSON BRANCH

2201 ST. CHARLES AVENUE

WARREN SULLIVAN, *Manager*

## TULANE AVENUE BRANCH

3306 TULANE AVENUE

EDWARD B. WEAKS, *Assistant Cashier*

## OIL AND GAS DEPARTMENT

HOWARD F. ALBERTY, *Staff Geologist*

## LATIN AMERICAN REPRESENTATIVE

WILLIAM A. VON HUMBOLDT

AV. JUAREZ 42

EDIFICIO C. DESP. 1004

MEXICO 1, D. F., MEXICO

## AFFILIATE BANK

THE NATIONAL BANK OF COMMERCE  
IN JEFFERSON PARISH

**OFFICERS**

VIC J. PASSERA *President*  
 F. M. LEGUENEC, JR. *Vice President and Cashier*

LOUIS H. CLAY *Vice President*

HOWARD S. COX *Vice President*

JOSEPH S. DELANEY *Vice President*  
*Mgr. Metairie Office*

VICTOR J. KURZWEG, JR. *Vice President*

SHELLEY SCHUSTER *Vice President*

CLEBERT C. SMITH *Vice President*

FRANK A. GRECO *Vice President*  
*Mgr. Harahan Office*

NUMA J. BARROIS *Assistant Vice President*

EDWARD SMIRA *Assistant Cashier & Manager*  
*Veterans Highway Office*

DAVID J. VOGLER *Assistant Cashier*

DANIEL B. RYAN *Assistant Cashier & Manager*  
*Consumer Credit Dept.*

CLEVELAND GONZALES *Manager Discount Dept.*

**ADVISORY COMMITTEE**

HAROLD BUCHLER *Attorney*

SIDNEY W. CAMPBELL *President,*  
*S. W. Campbell & Son, Inc.*

SAM CARO *President,*  
*Southern Tailoring Co., Inc.*

JOSEPH LUCAS *President,*  
*Medical Arts Pharmacy, Inc.*

THURSTON B. MARTIN *President,*  
*First National Life Ins. Co.*

GEORGE J. PECORARO *Business Consultant*

HAROLD E. WISE *President,*  
*Harold's Cafeteria*

MCDONALD, BUCHLER & CARR, *Attorneys*

**SERVICES**

COMMERCIAL ACCOUNTS

PERSONAL ACCOUNTS

SAVINGS DEPARTMENT

COMMERCIAL LOANS

PERSONAL LOANS

AUTOMOBILE LOANS

REAL ESTATE MORTGAGE LOANS

HOME IMPROVEMENT LOANS

TRAVELLERS CHEQUES

GUARANTEED CHECKS

SALE DEPOSIT VAULTS

CHRISTMAS CLUB

Head Office—2400 Jefferson Highway

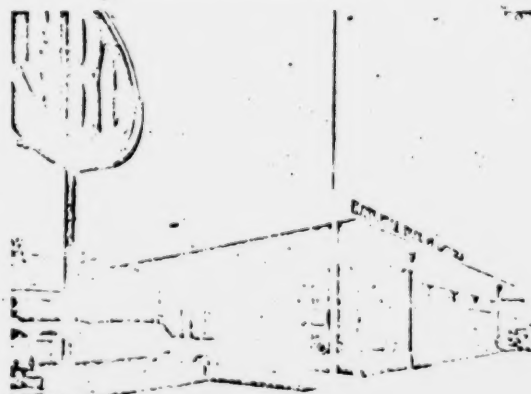
Metairie Office—2030 Metairie Road

Harahan Office—6313 Jefferson Hwy.

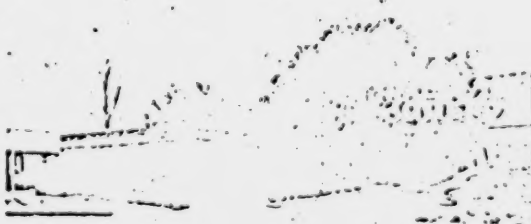
Veterans Hwy. Office—5300 Veterans Hwy.

**HEAD OFFICE**

Jefferson Highway at Labarre Road

**METAIRIE OFFICE**

2030 Metairie Road

**HARAHAN OFFICE**

Jefferson Highway at Oak Avenue

# THE NATIONAL BANK OF COMMERCE

IN JEFFERSON PARISH



STATEMENT OF CONDITION

DECEMBER 29, 1961

# THE NATIONAL BANK OF COMMERCE

IN JEFFERSON PARISH (LOUISIANA)

## DIRECTORS

WILLIAM E. CASSIDY  
*Asst. Div. Sales Manager  
Texaco, Inc.*

LOUIS H. CLAY  
*Board Chairman,  
Southern Ford Tractor Corporation*

HOWARD S. COX  
*Vice President*

S. J. GONZALES, JR.  
*President,  
Southern School Equipment Co., Inc.*

WILLIAM T. HESS  
*Vice-President & Chief Engineer,  
Louisiana Power & Light Co.*

DR. VIRGIL T. JACKSON, JR.  
*Dentist*

ARTHUR L. JUNG, JR.  
*President,  
Jung Realty Co., Inc.*

VICTOR J. KURZWEG, JR.  
*President,  
Consolidated Companies, Inc.*

F. M. LEGUENEC, JR.  
*Vice President and Cashier*

C. C. McKIRAHAN  
*Retired*

JOHN A. MILLER  
*President,  
Brown-Miller Company*

R. ITCHELL  
*President,  
Louisiana Transit Co., Inc.*

ROBERT M. MONSTED  
*Board Chairman,  
Jefferson Cold Storage, Inc.*

DR. ALTON OCHSNER  
*Physician and Surgeon*

JOHN OULLIBER  
*President,  
The National Bank of Commerce  
in New Orleans*

HENRY F. OWSLEY, JR.  
*Owner,  
Owsley Insurance Agency*

VIC J. PASSERA  
*President*

SHELLY SCHUSTER  
*Board Chairman,  
Transoceanic Shipping Co.*

CLEBERT C. SMITH  
*Executive Vice President  
The National Bank of Commerce  
in New Orleans*

ROSS WILLS  
*Vice President  
C. W. Vollmer & Co., Inc.*

## STATEMENT OF CONDITION

DECEMBER 29, 1961

### RESOURCES

Cash on Hand and Due from Banks	\$ 3,171,975.70
U. S. Government Securities	8,517,525.01
Municipal Securities	2,018,474.02
Stock in Federal Reserve Bank	36,000.00
Obligations of U. S. Government Instrumentalities	685,301.50
Loans and Discounts	6,020,070.67
Bank Buildings and Leasehold Improvements	431,483.94
Furniture and Fixtures	177,480.54
Accrued Interest, Prepaid Expenses, and Other Assets	152,545.27
<b>TOTAL RESOURCES</b>	<b>\$21,210,856.65</b>

### LIABILITIES

Deposits	\$19,340,384.70
Discount Collected but not Earned	61,932.78
Reserve for Taxes, Interest and Expenses	427,176.69
<b>TOTAL LIABILITIES</b>	<b>\$19,829,494.17</b>
Capital Stock	\$600,000.00
(60,000 Shares, \$10.00 Par)	
Surplus	600,000.00
Undivided Profits	181,362.48
<b>Total Capital Funds</b>	<b>\$ 1,381,362.48</b>
<b>TOTAL</b>	<b>\$21,210,856.65</b>

Member Federal Deposit Insurance Corporation

This Bank is a Legal Affiliate of  
The National Bank of Commerce in New Orleans

Filed June 20, 1962

EXHIBIT 2

10340

RULES AND REGULATIONS

(b) When a lot of livestock, to be moved under this part, for immediate slaughter, to a federally inspected slaughtering establishment or a slaughtering establishment specifically approved in § 78.15(b) of this chapter, has been inspected and found free of any evidence of screwworms and treated at an inspection station or other place in accordance with § 83.6(b), § 83.7(a)(2), § 83.8(c)(2), § 83.8a (a) or (c), or § 83.12(a), the inspector may issue a certificate, in quadruplicate, reciting that the lot has been so inspected and found free of any evidence of screwworms and treated, identifying the lot by number of livestock, kind, breed, and sex, and giving the data of inspection and treatment, the names and addresses of the consignor and consignee, and the point of origin and destination of the shipment.

(Secs. 4, 5, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791, as amended, 792, as amended; 21 U.S.C. 111-113, 120, 121. Interpret or apply secs. 6, 7, 23 Stat. 32, as amended; 21 U.S.C. 115, 117, 19 P.R. 74, as amended)

The foregoing amendments impose additional requirements upon the interstate movement of livestock and certain dogs from or through Alabama or Georgia into Florida. There are currently existing in Alabama and Georgia screwworm infestations which may be disseminated into Florida, an area currently free of screwworms. If additional preventive measures are not taken regarding the interstate movement of livestock into Florida. The amendments should be made effective promptly in order to accomplish their purpose in the public interest. Therefore, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public procedure with respect to such amendments are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making them effective less than 30 days after their publication in the FEDERAL REGISTER.

**Effective date.** The foregoing amendments shall become effective upon issuance.

Done at Washington, D.C., this 31st day of October 1961.

M. R. CLARKSON,  
Acting Administrator,  
Agricultural Research Service.

[P.R. Doc. 61-10563; Filed, Nov. 2, 1961; 8:53 a.m.]

§ 262.4 Action on applications or requests, and similar matters.

(g) *Bank holding company and merger applications.* In addition to procedures applicable under other provisions of this part, the following procedures are applicable in connection with the Board's consideration of applications under section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), hereafter called holding company applications, and of applications under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828), hereafter called merger applications. Unless otherwise indicated, these procedures apply to both types of applications.

(1) The Board issues each week a list that identifies holding company and merger applications received during the preceding week. Notice of receipt of each holding company application is published in the FEDERAL REGISTER as provided in § 222.4(e)(2) of this chapter (Regulation Y).

(2) If a hearing is required by law or if the Board determines that a hearing for the purpose of taking evidence is desirable, the Board will issue an order for such a hearing, and notice thereof will be published in the FEDERAL REGISTER. Any such hearing will be conducted by a hearing examiner or hearing officer in accordance with the Board's Rules of Practice for Formal Hearings (Part 263 of this chapter) and, unless otherwise ordered by the Board, shall be public.

(3) In any case in which a formal hearing is not ordered by the Board, the Board may afford the applicant and other properly interested persons (including Governmental agencies) an opportunity to present views orally before the Board or its designated representative. Unless otherwise ordered by the Board, any such oral presentation of views shall be public and notice of such public proceeding will be published in the FEDERAL REGISTER. Participants in any oral presentation of views will be allotted reasonable periods of time for presentation of their views.

(4) The Board's action on each application is embodied in an Order that indicates the voting of members of the Board and is accompanied by a Statement of the reasons for the Board's action. Both the Order and accompanying Statement are released to the press. Normally, the Statement is issued at the time of issuance of the Order; where this is not practicable, the Statement is issued as promptly as possible after issuance of the Order. Each such Order is published in the FEDERAL REGISTER.

approval, a requirement that the transaction approved shall be consummated within three months and, in the case of acquisition by a holding company of stock of a newly organized bank, a requirement that such bank shall be opened for business within six months.

(6) After action by the Board on an application, the Board will not grant any request for reconsideration of its action, unless the request presents relevant facts that, for good cause shown, were not previously presented to the Board, or unless it otherwise appears to the Board that reconsideration would be appropriate.

2a. The purpose of this amendment is to inform the public of procedures followed by the Board of Governors of the Federal Reserve System with respect to applications under section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) and of applications under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828).

b. Notice, public participation, and deferred effective date are not required by section 4 of the Administrative Procedure Act for rules of agency procedure or practice, and therefore were not provided in connection with the adoption of these amendments.

(Sec. 11(1), 38 Stat. 262; 12 U.S.C. 348(1))

BOARD OF GOVERNORS OF THE  
FEDERAL RESERVE SYSTEM,  
[SEAL] MERRITT SHERMAN,  
Secretary.

[P.R. Doc. 61-10538; Filed, Nov. 2, 1961; 8:53 a.m.]

Title 14—AERONAUTICS AND  
SPACE

Chapter III—Federal Aviation Agency

SURCHAPTER C—AIRCRAFT REGULATIONS

[Reg. Docket No. 950; Amdt. 362]

PART 507—AIRWORTHINESS  
DIRECTIVES

Canadair CL-44D4 Aircraft

There have been failures of the elevator tab tension rods on Canadair CL-44D4 aircraft. To preclude further failures, an airworthiness directive requiring replacement of the elevator tab tension rods every 450 hours' time in service is considered necessary.

As a situation exists which demands immediate action in the interest of safety, it is found that notice and public

Title 12 DANCE AND DANCING



§ 83.12(a), the inspector may issue a certificate, in quadruplicate, reciting that the lot has been so inspected and found free of any evidence of screwworms and treated, identifying the lot by number of livestock, kind, breed, and sex, and giving the data of inspection and treatment, the names and addresses of the consignor and consignee, and the point of origin and destination of the shipment.

(Secs. 4, 5, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791, as amended, 792, as amended; 21 U.S.C. 111-113, 120, 121. Interpret or apply secs. 6, 7, 23 Stat. 32, as amended; 21 U.S.C. 115, 117, 19 F.R. 74, as amended)

The foregoing amendments impose additional requirements upon the interstate movement of livestock and certain dogs from or through Alabama or Georgia into Florida. There are currently existing in Alabama and Georgia screwworm infestations which may be disseminated into Florida, an area currently free of screwworms, if additional preventive measures are not taken regarding the interstate movement of livestock into Florida. The amendments should be made effective promptly in order to accomplish their purpose in the public interest. Therefore, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public procedure with respect to such amendments are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making them effective less than 30 days after their publication in the FEDERAL REGISTER.

**Effective date.** The foregoing amendments shall become effective upon issuance.

Done at Washington, D.C., this 31st day of October 1961.

M. R. CLARKSON,  
Acting Administrator,  
Agricultural Research Service.

[P.R. Doc. 61-10563; Filed, Nov. 2, 1961; 8:53 a.m.]

## Title 12—BANKS AND BANKING

### Chapter II—Federal Reserve System

#### SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

##### PART 262—RULES OF PROCEDURE

##### Actions on Applications or Requests, and Similar Matters; Bank Holding Company and Merger Applications

1. Effective November 1, 1961, Part 262 is amended by adding the following new paragraph (g) to § 262.4:

of 1956 (12 U.S.C. 1842), hereafter called holding company applications, and of applications under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828), hereafter called merger applications. Unless otherwise indicated, these procedures apply to both types of applications.

(1) The Board issues each week a list that identifies holding company and merger applications received during the preceding week. Notice of receipt of each holding company application is published in the FEDERAL REGISTER as provided in § 222.4(e) (2) of this chapter (Regulation Y).

(2) If a hearing is required by law or if the Board determines that a hearing for the purpose of taking evidence is desirable; the Board will issue an order for such a hearing, and notice thereof will be published in the FEDERAL REGISTER. Any such hearing will be conducted by a hearing examiner or hearing officer in accordance with the Board's Rules of Practice for Formal Hearings (Part 263 of this chapter) and, unless otherwise ordered by the Board, shall be public.

(3) In any case in which a formal hearing is not ordered by the Board, the Board may afford the applicant and other properly interested persons (including Governmental agencies) an opportunity to present views orally before the Board or its designated representative. Unless otherwise ordered by the Board, any such oral presentation of views shall be public and notice of such public proceeding will be published in the FEDERAL REGISTER. Participants in any oral presentation of views will be allotted reasonable periods of time for presentation of their views.

(4) The Board's action on each application is embodied in an Order that indicates the voting of members of the Board and is accompanied by a Statement of the reasons for the Board's action. Both the Order and accompanying Statement are released to the press. Normally, the Statement is issued at the time of issuance of the Order; where this is not practicable, the Statement is issued as promptly as possible after issuance of the Order. Each such Order is published in the FEDERAL REGISTER; and the Order and Statement are published in the next succeeding issue of the Federal Reserve Bulletin.

(5) Each Order of the Board approving an application includes, as a condition of such approval, a requirement that the transaction approved shall not be consummated within seven calendar days following the date of such Order, except in emergency or other situations as to which the Board determines that such a requirement would not be in the public interest. Each Order approving an application also includes, as a condition of

that, for good cause shown, were not previously presented to the Board, or unless it otherwise appears to the Board that reconsideration would be appropriate.

2a. The purpose of this amendment is to inform the public of procedures followed by the Board of Governors of the Federal Reserve System with respect to applications under section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) and of applications under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828).

b. Notice, public participation, and deferred effective date are not required by section 4 of the Administrative Procedure Act for rules of agency procedure or practice, and therefore were not provided in connection with the adoption of these amendments.

(Sec. 11(1), 38 Stat. 262; 12 U.S.C. 248(1))

BOARD OF GOVERNORS OF THE  
FEDERAL RESERVE SYSTEM

[SEAL] MERRITT SHERMAN,

Secretary

[P.R. Doc. 61-10538; Filed, Nov. 2, 1961; 8:53 a.m.]

## Title 14—AERONAUTICS AND SPACE

### Chapter III—Federal Aviation Agency

#### SUBCHAPTER C—AIRCRAFT REGULATIONS

[Reg. Docket No. 950; Amdt. 382]

#### PART 507—AIRWORTHINESS DIRECTIVES

##### Canadair CL-44D4 Aircraft

There have been failures of the elevator tab tension rods on Canadair CL-44D4 aircraft. To preclude further failures, an airworthiness directive requiring replacement of the elevator tab tension rods every 450 hours' time in service is considered necessary.

As a situation exists which demands immediate action in the interest of safety, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective upon publication in the FEDERAL REGISTER.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

CANADAIR. Applies to all CL-44D4 aircraft. Compliance required as indicated.

To preclude failure of the elevator tab tension rods, P/N 28-90031, the life of each rod is limited to 450 hours' time in service.

57

Filed June 20, 1962

EXHIBIT 3

WHITNEY HOLDING CORP.

Order for Public Proceeding

In the matter of the application of Whitney Holding Corporation, New Orleans, Louisiana, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956.

Whitney Holding Corporation, New Orleans, Louisiana, has filed an application, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956, for prior approval by the Board of Governors of action whereby Whitney Holding Corporation would become a bank holding company by acquiring substantially all of the stock of (1) the Crescent City National Bank, New Orleans, Louisiana (a proposed new bank), into which would be consolidated the existing Whitney National Bank of New Orleans, under the latter title, and (2) the Whitney National Bank in Jefferson Parish, Louisiana (a proposed new bank). Notice of this application was published in the FEDERAL REGISTER affording interested persons an opportunity to submit written views and comments (26 F.R. 6792).

It now appears to the Board to be in the interest of the public, as well as the Applicant, to afford further opportunity for the expression of views and opinions by interested persons in a public proceeding before the Board.

Accordingly, it is hereby ordered, That a public proceeding before the Board be held commencing at 10 a.m. on January 17, 1962, at the offices of the Board of Governors, Washington, D.C.

It is further ordered, That any person desiring to appear before the Board at this proceeding should file with the Secretary of the Board, 20th and Constitution Avenue NW., Washington 25, D.C., on or before January 3, 1962, a written request setting forth a brief statement of the nature of the views he wishes to express. Persons submitting such requests will be notified of the Board's decision thereon.

Dated at Washington, D.C., this 16th day of December 1961.

By order of the Board of Governors.

[SEAL]

MERRITT SHERMAN,  
Secretary.

WHITNEY HOLDING CORP.

Order for Public Proceeding

In the matter of the application of Whitney Holding Corporation, New Orleans, Louisiana, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956.

Whitney Holding Corporation, New Orleans, Louisiana, has filed an application, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956, for prior approval by the Board of Governors of action whereby Whitney Holding Corporation would become a bank holding company by acquiring substantially all of the stock of (1) the Crescent City National Bank, New Orleans, Louisiana (a proposed new bank), into which would be consolidated the existing Whitney National Bank of New Orleans, under the latter title, and (2) the Whitney National Bank in Jefferson Parish, Louisiana (a proposed new bank). Notice of this application was published in the Federal Register affording interested persons an opportunity to submit written views and comments (26 F.R. 6792).

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Accordingly, it is hereby ordered, That a public proceeding before the Board be held commencing at 10 a.m. on January 17, 1962, at the offices of the Board of Governors, Washington, D.C.

It is further ordered, That any person desiring to appear before the Board at this proceeding should file with the Secretary of the Board, 20th and Constitution Avenue NW., Washington 25, D.C., on or before January 3, 1962, a written request setting forth a brief statement of the nature of the views he wishes to express. Persons submitting such requests will be notified of the Board's decision thereon.

Dated at Washington, D.C. this 19th day of December 1961.

By order of the Board of Governors.

[SEAL]

MERRITT SHERMAN,  
Secretary.

[P.R. Doc. 61-12172; Filed, Dec. 22, 1961;  
8:46 a.m.]

Federal Register  
Dec. 22, 1961



## Exhibit 4

## TRANSCRIPT OF PROCEEDINGS

## UNITED STATES OF AMERICA

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

In the Matter of the Application of: WHITNEY HOLDING COR-  
PORATION New Orleans, Louisiana

Pursuant to Section 3 (a) (1) of the Bank Holding Company  
Act of 1956

Washington, D. C.

January 17, 1962

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[1]

## UNITED STATES OF AMERICA

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

In the Matter of: The Application of WHITNEY HOLDING CORPORATION, New Orleans, Louisiana, pursuant to Section 3 (a) (1) of the Bank Holding Company Act of 1956 for the Board's approval of the formation of a Bank Holding Company

Room 1202  
Federal Reserve Building  
Constitution Avenue  
Washington, D. C.

Wednesday, January 17, 1962.

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a.m.

## MEMBERS OF THE BOARD PRESENT:

Chairman William McC. Martin, Jr., Presiding; Governor C. Canby Balderston; Governor A. L. Mills, Jr.; Governor J. L. Robertson; Governor Charles N. Shepardson; Governor G. H. King, Jr.; Governor George W. Mitchell.

## APPEARANCES:

Malcolm L. Monroe, Esq., Monroe & Lemann, 1424 Whitney Building, New Orleans, Louisiana, and Keelm W. Berry, President, on behalf of Whitney Holding Corporation.

[2] Clem H. Schrt, Esq., Schrt & Boyle, 1507 Pere Marquette Building, New Orleans, Louisiana, on behalf of opposition: L. J. Roussel, Universal Drilling Corporation, Gulf Natural Gas Company, and estate of Mrs. John Segier.

Louis J. Roussel, 502 Whitney Building, New Orleans, Louisiana, on behalf of Self; American State Gulf Natural Gas Corporation and Universal Drilling Company, Inc.

Victor J. Passera, Jr., President, The National Bank of Commerce in Jefferson Parish, Louisiana.

[3]

## PROCEEDINGS

Chairman Martin: All right, gentleman, I will call the meeting to order.

The Board is meeting this morning to receive oral presentations of views and comments with respect to the application by the Whitney Holding Corporation, New Orleans, Louisiana, for the Board's prior approval of the formation of a holding company, pursuant to Section 3 (a) (1) of the Bank Holding Company Act.

The applicant seeks approval of its acquisition of the stock of the Crescent City National Bank, New Orleans, Louisiana, a proposed new bank, into which would be consolidated the existing Whitney National Bank of New Orleans under the latter title, and the Whitney National Bank in Jefferson Parish, Louisiana, a proposed new bank.

I am going to ask counsel for the Board to state for the record the appearances to be made and the general procedure that we will follow.

Mr. O'Connell: Mr. Chairman, pursuant to publication in the Federal Register of notice of this public proceeding and for opportunity for the presentation to the Board of Governors of views and comments, the following appearances for the purpose of presenting such views are noted:

On behalf of the applicant, Mr. Keelm W. Berry, President, Whitney National Bank of New Orleans, and [4] Mr. Malcolm L. Monroe, counsel for the applicant.

Mr. Chairman, the applicant has been given one hour for its presentation and has been advised that this time may be used in any manner desired in relation to its presentation in chief, summary, or rebuttal presentation.

I will ask each person appearing this morning that if a written statement of his remarks is available, that it be presented to the court reporter to be placed in the record, and then to the extent possible that a summary of that statement be presented to the Board.

The Board is also granted the opportunity for oral presentation to Mr. Louis J. Roussel and to his counsel, Mr. Clem H. Schrt, both gentlemen from New Orleans, Louisiana. These gentlemen have also been advised together they have 30 minutes for their presentations.

In addition, Mr. Chairman, I am advised this morning there is present at the oral presentation a Mr. Vic J. Passera, Jr., President of the National Bank of Commerce

in Jefferson Parish, Louisiana. Mr. Passera did not, pursuant to the Board's published notice, request in advance nor was he given permission to appear and give a statement, Mr. Chairman. However, he now requests he be allowed to appear before the Board and present a few remarks in reference to the application.

If appropriate, I would like the Chairman's views on this request.

[5] Chairman Martin: Well, the Chair will ask the applicant whether he has any objection to Mr. Passera.

Mr. Berry: None.

Chairman Martin: Well, if the applicant has no objection, we will give Mr. Passera not more than 10 minutes if that is agreeable with Mr. Passera.

Mr. Passera: Yes, thank you.

Mr. O'Connell: Thank you, Mr. Chairman.

I am directed by the Board to advise that within 15 days following today's proceedings, that is on or about February 1, 1962, the Board will receive from participants any written comments or views they wish to submit relating to today's presentations.

A transcript of the proceedings is being made and copies will be available for purchase. Orders for such copies may be placed with the reporter at the close of today's presentations.

Mr. Chairman, that concludes the Board's counsel's statement.

Chairman Martin: The Board will now proceed with the applicant and anyone the applicant sees fit to testify.

#### ORAL ARGUMENT OF KEVIN W. BERRY, PRESIDENT, WHITNEY HOLDING CORPORATION

Mr. Berry: I feel apologetic in taking the time of this Board.

Chairman Martin: There is no reason to stand up if you would rather sit down.

[6] Mr. Berry: I will sit in just a moment, then, if I may. I first wanted to give you some maps here that would enable you to follow the thing, see the physical layout.

In New Orleans, we are further inclined to judge directions by the compass, in relationship to the river and the lake, so that in our application we refer to "East Jefferson," "East Jefferson west of New Orleans."

The heavy blue line on these maps shows the Parish line and the application relates to this unit here (indicating map) in green, the green star. This unit here (indicating on map). And it is "East Jefferson" only because it is on the east bank of the Mississippi River.

Now, there is a portion of Jefferson Parish located on the other bank of that river. But at this particular time, we are asking for the right to serve East Jefferson.

In order to conserve your time, I shall stick very closely to some written comments which I have prepared.

The City of New Orleans as a metropolitan area has spread in recent years beyond the boundaries of the Parish of Orleans.

The "parish" in our state is equivalent to a county.

Under present laws in our state, the Whitney is not permitted to establish branches outside the Parish of Orleans.

There is a rapidly growing industrial area in [7] adjoining Jefferson Parish up river from Orleans, in the area of that green star.

There are one or two other items that should be pointed out. There is a causeway across the Lake Pontchartrain, that ties into this (indicating on map)—comes down through here—provides a through traffic from across the lake down to that point. That is the reason for the concentration in this immediate area.

The causeway is here (indicating on map).

The industrial development, in the form of large plants, more or less extends up river on both sides to Baton Rouge, about 30 miles. Industry is becoming more conscious of fresh water as a valuable natural resource which is becoming scarce in older industrial areas, such as in Texas and in the Birmingham, Alabama, area—around Birmingham.

There is, therefore, good reason to look forward to continued industrial growth along the river with a concentration of smaller industries in Jefferson Parish.

New Orleans is located on low land, all of which requires levees and drainage before it can be used for industrial and residential purposes. This makes the land values high and tends to concentrate population. At present, most of the open land available for housing development is between Lake Pontchartrain and the Mississippi River in Jefferson Parish, the area I pointed out to you. That area residentially has been [8] growing rapidly.

The management of the Whitney National Bank has been studying and weighing alternative methods of entering Jefferson Parish to serve our present customers who have moved their plants there, or who have gone there to live and to participate in the further growth of that area.

The feasible alternatives are either an affiliate bank owned by a few large stockholders of the Whitney—stockholders whose holdings in the original bank are so large they cannot afford to part with the holdings in the small one—or the establishment of a holding company which would own all of the stock of the present Whitney National Bank and own, likewise, all of the stock of the Whitney National Bank in Jefferson Parish.

When I refer to "all," I mean all except the directors' qualifying shares. I mean that will apply all the way through.

This has been a problem demanding action by Whitney management since the Comptroller of the Currency in 1955 allowed our largest competitor in New Orleans to operate in Jefferson Parish by chartering the National Bank of Commerce in Jefferson Parish, an affiliate of the National Bank of Commerce in New Orleans.

The officers of the Whitney National Bank determined in 1960 that the holding company was the proper solution. [9] provided we could put the ownership of the present Whitney National Bank of New Orleans stock into such a company and, by the use of Whitney assets, establish a bank in Jefferson Parish, which would likewise be fully owned by the holding company.

The Comptroller of the Currency has concurred in a program which has the effect of putting the ownership of the present Whitney National Bank stock into the Whitney Holding Corporation, through this Crescent City National Bank that was mentioned, and to the establishment of the Whitney National Bank in Jefferson Parish with funds from the present Whitney National Bank, the stock of which would be also owned by the holding company.

The Comptroller's action, however, is subject to the approval of this Board of the application of the Whitney Holding Corporation to establish the wholly owned Jefferson Parish subsidiary.

This subject was first discussed with the legal staff of the Federal Reserve Board in the fall of 1960. Your staff called my attention to something which I should have under-



stood if I had been more familiar with the Holding Company Act; they called my attention to the fact that by completing the first part of the program—in other words, the stock of the Whitney National Bank of New Orleans would be wholly owned by the Whitney Holding Corporation—we would not need come to this Board at that stage since the holding corporation would then own [10] only one bank and would not be a holding company under the Holding Company Act.

If we had done it that way, we would clearly now be asking you only for permission to become a holding company by establishing a new bank in Jefferson Parish and by acquiring all of its stock.

Because the Comptroller did not want to take the first step—ownership of the Whitney National Bank stock by the Whitney Holding Corporation—unless we simultaneously went forward with the second step, we are here before you today with our application in this form.

The Comptroller has already concurred in the acts required to consummate the first step and granted preliminary approval of an application for charter for the Whitney National Bank in Jefferson Parish. He has made the normal investigation by his examiners in the field, along with examiners in your office and the FDIC.

We understand that he has advised you that these charters will be issued if and when the Federal Reserve Board approves this application for a holding company, which will own the stock of the present Whitney National Bank of New Orleans and the stock of Whitney National Bank of Jefferson Parish.

On the recommendation of the Comptroller, we proceeded with our stockholders' meeting submitting to stockholders our entire program and the reasons for it.

[11] On November 29th, last year, our stockholders met. We had 105,824 shares out of 112,000 outstanding represented at the meeting; 93,645 shares voted in favor of the program and 12,145 shares voted against it. I take it this represents overwhelming approval by our stockholders.

Now then, this general statement of a physical layout at home and of our program, which Chairman Martin very well summarized in stating the purpose of this meeting, provides the general background against which I would like to discuss the five items under the Holding Company Act as a basis for action on the application.

Mr. Monroe is handing you a copy of our annual report as of the year end and I would like for you to turn to the statement which is in the middle of it. He will also give you a set of figures which cover the operation of the Whitney National Bank from 1936 to June 30th. I left the last one June 30th simply because they conform to the application which was filed early in July.

The last line on that is not a year-end figure; it is a mid-year figure therefore.

I give you these because to me these figures are the best answer which I could make to factors (1), (2), and (3), which the Holding Company Act sets up as factors governing the determination of application for approval.

The form of the capital structure of the Whitney [12] National Bank of New Orleans—\$2.8 million of capital, \$27.2 million of surplus, and \$13,835,000 undivided profits—evidences conservative management over a long period of years.

The figures show that there have been no mergers of other banks into the Whitney and the capital structure stated in those figures cannot be created except out of the accumulation of earnings. It cannot be set up in a day.

Insofar as factors (1), (2), and (3) of the Holding Company Act, the items to be considered are applied to the new unit in Jefferson Parish. The management of that unit will be supplied from the Whitney National Bank of New Orleans. That unit will have the benefit of the training program of the old bank and can select the personnel best adapted to its needs.

As to the "prospects" of the old bank, which is one of the items in the first three categories, I am sure the Board is willing to assume that the old bank will continue to do at least as well in the future as it has in the past.

As to the "prospects" of the unit in Jefferson Parish, it should share in the same sort of growth as the affiliate of the National Bank of Commerce in New Orleans, our competitor, which has in the 6 years of its operation in Jefferson Parish accumulated in excess of \$18 million of deposits. The continued growth of the industrial area and residential area of New Orleans into Jefferson Parish must mean an expanding need for banking services.

[13] As a matter of fact, in that connection, the figures for the banks there are interesting. The Merchants Savings Bank, \$13 million deposits in 1956; \$17 million in 1960.

Merchants Trust Company in Canada, 1956, \$3 million; 1960, \$6 million. National Bank of Commerce in Jefferson Parish, \$9.4 million in 1956; \$18 million in 1960. Putting them altogether, it is a 63 per cent increase in 5 years, which is I think an evidence of the growth of the community and the need for expanding banking service in the area.

As to the fourth factor—"the convenience, needs and welfare of the institution and the area concerned"—the sheet of figures which you have before you showing the results of the Whitney National Bank of New Orleans' operation since 1936 giving the growth in deposits and the increase in loans evidence the character of service and the extent to which it has served the convenience, needs, and welfare of the area in which it is operating.

The Whitney National Bank of New Orleans will continue in exactly the same form as it is now except for the withdrawal of \$650,000 in capital funds which will be put into the Jefferson Parish unit as capital for it.

As to the criteria of the fourth factor as applied to the National Bank of Commerce in Jefferson Parish, our application filed with you in Exhibit D contains letters from such concerns as: Plymouth Cordage Company, a twine manufacturer; [14] Charles Denny, Incorporated, a large manufacturer and dealer in bakery supplies—they operate a plant which we have financed in the immediate area in Jefferson Parish, this green star on the map (indicating map), they operate warehouses in Dallas and Atlanta; Mr. O. E. Alexander, Jr., Zone Manager, Chevrolet Motor Division; General Motors Corporation, they have finished a large building in which they distribute parts, which is located in that immediate area; The Freiberg Mahogany Company, manufacturers of mahogany lumber and veneer; Rausch Naval Stores Company, manufacturers, dealers, and exporters of turpentine, rosin, and pine tar; Great Atlantic and Pacific Tea Company, which has an office and warehouse there; Boyce Machinery Corporation, distributors of caterpillar equipment and operate throughout the state with offices right at the bridge in the neighborhood of the green star; Crescent Materials Service, a wholesale building supply dealer; Sears, Roebuck & Company, which has its warehouse and service operation in that immediate area; Max N. Tobias Bag Company, a bag manufacturer and also a distributor of cattle feed and chicken feed throughout the Central American countries and the South

American countries, around the Gulf and in the island. They use our foreign department.

All of these concerns are customers of Whitney National Bank. Their letters certify to their need for Whitney service closer to their operations in Jefferson Parish than our present facilities.

[15] We could have brought these here and others as witnesses as to the need and convenience of this Whitney National Bank in Jefferson Parish. As I read the list, I realize we failed to ask one of our largest customers in the immediate vicinity of the proposed Jefferson Parish bank to write a letter. His plant is immediately across the bridge. That concerns the Avondale Shipyards, Incorporated. I am going to tell you a little about that because I think it indicates the kind of service that will be needed and is needed in an area of a small industry.

That concern, Avondale Shipyards, began doing business with us as a barge repair yard which had acquired the tracts down the levee used by the Southern Pacific Railroad for loading its railroad cars onto ferries before the construction of the bridge.

With the tools at hand and those facilities in the period preceding World War II, they accepted the Navy contract to build three large Navy tugs, each costing between \$1 million and \$1.5 million. This company had \$65,000 worth of working capital.

We financed that particular contract because the management was capable. We financed them throughout the war period without V loan guarantees or other support.

The original owner sold the property a few years ago for \$14.5 million.

We are still the company's sole banking connection. [16] But the affiliate of our chief competitor has two units in Jefferson Parish closer to this customer of ours than our nearest unit in New Orleans.

The same is true of each of the companies listed in the letters.

Our application file also shows that the Illinois Central Railroad is pressing the development of its lands for use by small industries.

We feel that those industries are entitled to the choice of banking service of more than one New Orleans-based bank.

I think that is important. In other words, we have one

New Orleans-based bank in the area and serving the area and, reading the categories as they are set out in the Act, it seems to me that the customer is entitled to a choice, not being forced to go to one New Orleans-based bank in that Parish if he needs service that goes beyond the ability of the small or independent banks to serve.

Inasmuch as the Whitney National Bank in Jefferson Parish is a new unit, I take it that the National Bank Examiner, on behalf of the Comptroller, your examining staff, and the FDIC examiners reported to each of their agencies on the general convenience and needs of the community.

Since our application has been on file with you, in fact since I wrote the memorandum, the Comptroller has granted [17] to the National Bank of Commerce permission to open an additional unit, making five units I think on the east bank of the river. And the state authorities have also authorized a state institution, the location of which we had originally proposed a branch.

I have attached to this a letter in which they are offering stock. They describe the possibilities of Jefferson Parish in glowing terms.

The one comment that is made is that "an availability study, made before applying for the charter, showed that there was room for six more banks in Jefferson."

I don't know how you determine it that accurately.

"The growth of Jefferson Parish has been amazing. It has had the largest population increase in this area. Retail sales have jumped from \$45 million to \$206 million. Effective buying income has climbed from \$44 million to \$382 million. Such tremendous economic growth, in our opinion, leads us to believe that an aggressive bank like ours has an excellent future."

Those are statements from competing sources which may lend some weight.

I have trouble in keeping factors (4) and (5) apart. They are inclined to mix. I think I can deal further with (4) and (5) by stating to the Board the factors which influenced the management and directors of the Whitney National Bank of New Orleans to adopt the holding company route and look to common [18] ownership of all the National Whitney Bank stock in New Orleans and stock of the Whitney National Bank in Jefferson Parish by a

holding company. That, of course, is subject to qualifications and directors' qualifying shares.

The management felt that it was the soundest method of pooling the deposits of our customers and our capital funds for the use of our customers and the community in the development of the community.

The New Orleans metropolitan area, after all, is a unit only broken into pieces by imaginary boundary lines that run through the population centers.

The form of ownership of the Jefferson Parish unit which we propose will assure to all customers of that unit access to the large loan limits of the combined banks. They allow the security which arises out of the fact that the large bank and the small bank have identical ownership as well as management.

They will be assured that notwithstanding the smaller capitalization of the Jefferson Parish bank, the large bank cannot afford to let anything happen to the smaller to the detriment of the depositors.

As we see it, in an affiliate relationship, we have no way of knowing or no way to prevent the stock of the two institutions from drifting apart. It is my understanding that if, in the case of an affiliate, less than 50 per cent of its stock is owned by the stockholders of the other bank—in other words, [19] if the common ownership drops below 50 per cent—supervisory authorities must require that there be no interlocking of officers or directors.

That could happen in a period of stress and be embarrassing to both banks. It could even be embarrassing to the whole banking community in my opinion.

In an affiliate relationship with different stockholders, there is a constant conflict of interest as between those stockholders in every transaction between the two banks. With interlocking officers and directors, every transaction is open to question as to which bank had the advantage in the transaction.

That could be eliminated under the approach that we have taken.

From a customer's point of view, he has a similar conflict of interest. If he lives in the Parish, if he operates in the Parish, he carries his balance in the smaller bank, he does not feel that he has the same right to go into the



larger bank to the senior officers to discuss his credit and management problems.

I think that is one of the most important services a bank renders aside from lending money, discussing the customer's problems with him and helping him arrive at a proper decision, letting him convince the bank management that his plans are correct and are right.

He would not feel that he had that privilege of coming [20] in to the larger bank's senior officers unless there were that common ownership of the two banks.

With the common ownership, he would have no hesitancy to come over; he would feel it is all the same general situation.

As to the competitive factor, monopoly factor, which goes into (5), inasmuch as we are starting a new unit from the ground up, we are not expanding in the adjoining community and absorbing by merger or consolidation banking resources which already exist.

Any expansion in the Whitney Holding Company system, once we are granted that authority to set up a holding company system which comes about by reason of this second unit—namely, the Whitney National Bank in Jefferson Parish—will come about because industry located in Jefferson Parish near that bank, or residents of Jefferson Parish find that unit convenient and our banking service better than some other service which is already there. They will come to us voluntarily because we are offering convenience, or there is a need not presently being filled, or even because they recognize soundness in this approach which is lacking in the affiliate approach.

Now, in order to complete your records, there will be some additional exhibits filed with you.

I will be glad to try to answer any questions that the Board has.

Again, I apologize for taking your time on what is to [21] us an important matter when you are confronted with much larger problems, but this is an important one to us.

Chairman Martin: This is an important matter to us also.

Questions? Does the Board have any questions?

Governor Mills: Mr. Chairman, if I might ask Mr. Berry, the question could carry over to the other gentlemen who are making statements—this is a very broad question, but I gather from the map and your discussion and from the



matter already available to the Board that the banking area for New Orleans should in fact be considered the metropolitan area and not necessarily the legal boundaries, or parish boundaries that are set by state law.

Now, viewed in that way, and the fact that there are these parish boundaries, it might be construed that the parish boundaries are comparable to the trade barriers that limit the movement of commerce and that have come under discussion in various states and different situations.

Now, if those state barriers were removed, could you perceive a different situation than the one that now confronts you?

In other words, if those barriers were removed and the privilege of branching were permitted into those areas, would you feel that the attitude of the state and Federal banking authorities would be different than those that have been [22] true in the past?

To put it more particularly, within the limits of the City of New Orleans where branching is now allowed, has there been any disposition of the public authorities to refuse the applications of the banks within the city to establish branches for the convenience and the service of their clients, and has there been any record that where those branches have been permitted and established, that the operation of any of them has been considered in official lights as having been detrimental, competitively, to any of the other banks?

Mr. Berry: No.

Governor Mills: Now to ask the question, one further point, if you extended that line of reasoning to the area in which you would now propose to enter through the holding company vehicle, would you consider or would others consider that what is tantamount to the establishment of a service as compared to a bank could prove in light of experience detrimental to the competitive efforts of smaller banks?

Mr. Berry: Taking New Orleans first in which we are permitted to establish branches, I know of no branch being refused as a matter of fact. And I know of no harm that ever came from starting one.

As a matter of fact—I wouldn't say that bankers are always guided by sound reasoning, but the pinch of operating costs has a tendency to control it anyway. If you move into a [23] territory that won't support a branch, it is simply a drain on you.

If branch banking were permitted in Jefferson Parish, I wouldn't be here because it would be much simpler to have it by way of a branch. We would eliminate one additional bit of supervision which we will have from your agency if we could go directly by branch. But that is not possible. We see no signs of it coming about by legislative action. And before we move—as a matter of fact, we waited rather long to move. As I say, our principal competitor has been in the parish since 1955 and our problem has been—we have been unwilling to go with an affiliate which we couldn't hold onto necessarily.

It doesn't become a part of our organization: it is just sort of hanging loosely. You have these conflicts of interest and it is awkward.

The thing that makes this interesting to us is the ability to approach the branch phase of it. From the point of view of service to the community, there isn't a shadow of doubt in my mind that there is the need for service. I don't think it hurts anyone to have the competition. And frankly, I don't think we will get business, as I said, in our units except insofar as we provide something that someone else isn't providing that the customer wants.

This area is growing very rapidly. At the moment it is the only land that is really readily available for building. [24] It doesn't have all the drainage advantages that the old City of New Orleans does. There are movements, there is discussion of some drainage to the east, toward the Gulf Coast, but that is still to come. But the real industrial area is going to be up-river because they are going there because there is fresh water and the Mississippi River as a fresh water stream is a tremendous natural resource.

A little farther up the river, there, you have some oil refineries. Our list of customers is incomplete—we have oil refineries and aluminum plants, sugar plants, sugar refinery. It is a growing industrial area that will need servicing. It should have a relationship with a large bank and that would have to be a downtown bank. Because chances of developing enough facilities in an independent unit there are not such as to enable anyone to take care of the needs of one of those larger companies involved.

Does that answer your question?

Governor Mills: Thank you.

Chairman Martin: Are there any other questions from the Board? (No response)

If not, thank you very much.

Mr. Berry: Delighted.

Mr. Monroe: Excuse me, Mr. O'Connell, I would like to complete the record.

Do I need to dictate into the record under your [25] procedures what we would like to have in the record that has been presented or will that automatically become a part of the record?

Mr. O'Connell: I would ask the Board that all the documents that have been presented by applicant be admitted.

Chairman Martin: No objection? (No response.)

They will be admitted as part of the record.

Mr. Monroe: That would also include the proceedings before the staff, the application?

Mr. O'Connell: The application and the previous submittals by you, supplemental application, are now part of the record and will be before the Board when it decides this matter.

Mr. Monroe: Thank you very much.

Chairman Martin: We will proceed now, then, with Mr. Roussel and Mr. Sehart.

ORAL STATEMENT OF LOUIS J. ROUSSEL, AMERICAN STATE GULF NATURAL GAS CORPORATION AND UNIVERSAL DRILLING COMPANY, INC.

Mr. Roussel: May I sit down?

Chairman Martin: Yes.

Mr. Roussel: My name is Louis J. Roussel.

I want to tell you that I left school in grammar school and if I make any grammatical errors, I will ask you to forgive me. You will know why. I have been working since I have been a youngster.

Now I will present to you, the members of the Board of Governors, the opposition to Mr. Berry's Holding Company deal:

I am appearing in opposition to the Holding Company [26] for the various reasons that I will list, as I will proceed.

First, the writer and his company are substantial stockholders in the Whitney National Bank. We believe that the

holding company plan is merely a subterfuge to eliminate cumulative vote.

We believe that it is a device that they will use in order to gather in all of the millions of dollars of hidden assets that the Whitney National Bank now has into a holding company without cumulative vote.

Second, I am enclosing a copy of a charter that they have filed to be used as a holding company charter, and I am sure that after you gentlemen take a look at this corporation that you will see what I see in it, that one man can control it at his will or whim, the way he sees fit.

Third, I am enclosing a copy of a purchase of real estate that was made by the Whitney National Bank in Saint Mary Parish, Louisiana, which is considered to be oil property.

This property is located 75 to 100 miles from the City of New Orleans. It could not be possibly used for any bank building or any use of the Whitney National Bank, in complete violation of the national laws of the United States governing national banks.

Four, on July 31st, I wrote a letter to Mr. R. M. Gidney, the Comptroller of the Currency. It is enclosed. It is self-explanatory. I informed Mr. Gidney that the Whitney [27] National Bank was listing the members of the Advisory Board and the directors all grouped together in such a manner that the public could not tell which was which.

Mr. Berry presented you with a copy of the financial statement of the Whitney Bank. If you will look at it, you will see that it is just that way, gentlemen.

I told Mr. Berry at that time that Mr. Taylor, at the annual meeting—Mr. Taylor had written me a letter that he would notify me to write them differently. I asked Mr. Berry that question at the annual meeting. He told me he didn't think he had to do that.

Five, on September 22, 1961, I forwarded to each stockholder and the Comptroller of the Currency a brochure which I had prepared showing the dealings between the Whitney National Bank and one of its directors involving property on Veterans Highway and Jefferson Parish.

It is alleged in that brochure that the property was sold for below its actual value, that many people had gone into the bank inquiring about this property and were given such a cold shoulder by Mr. Berry that most of them abandoned the idea of trying to buy. Others weren't able to obtain any

information whatsoever and, gentlemen, I have names of these people that I have interviewed. Consequently the property was sold for far below its actual value.

Mr. Berry answered that letter and brochure by stating [28] that the land deal was a relatively simple one.

At the annual stockholders' meeting on January 9th, I asked Mr. Berry the following question:

"Mr. Berry, if the land deal in Jefferson Parish on Veterans Highway and the lot on Carrollton and Plum was, as you stated, a relatively simple matter, would you please explain to the stockholders why the lot was purchased by Mr. Favrot's company, Carondelet Realty Corporation, who in turn sold it to Palmetto Realty Corporation and two of Mr. Favrot's relatives, who in turn sold it to the Whitney National Bank in a deed that did not recite the consideration?"

Mr. Berry answered at the meeting that they handled it as a trade in order to save \$25,000 in taxes; that would have been paid to the Federal Government.

If this is so, then I charge that Mr. Berry and Mr. Favrot as a director entered into a one-sided agreement in order to "fudge" on the Government to the tune of \$25,000 that was justly due.

Mr. Berry is now in front of the same Government asking them to help him form a holding corporation in order to eliminate cumulative voting. No other reason; cumulative vote.

He has "fudged" on his own Government by his own admission to the extent of \$25,000. I was raised under the theory that if you will take a little, you will take a lot. I wonder if Mr. Berry has systematically "fudged" on larger [29] amounts against his Government?

In Mr. Berry's own letter, he states as follows, and I am going to quote him, gentlemen—I am judging him by what he said himself and this is what Mr. Berry said:

"The lot on Carrollton Avenue was originally acquired at our suggestion at a price of \$100,000."

He told him to go ahead and buy that lot for \$100,000, and that he would take it as part trade in another deal, that he was selling him some of the bank's property for \$403,230.00.

Gentlemen, I issued a brochure on that land deal.

The St. Bernard Voice, a paper in St. Bernard Parish, wrote a front-page editorial. I have the answer to that brochure that Mr. Berry sent out and I would like to have you read it.

Six, on October 27, 1961, the writer mailed another release which was Special Release Number 6, to the stockholders of the Whitney National Bank, mailing them a copy of a petition that had been filed by the writer to examine the books of the Whitney National Bank.

The Whitney National Bank took the position that the writer had only 725 shares of the capital stock of the bank in his name and the rest was owned by the corporation which I am in charge of, that I could not see the books of the Whitney National Bank.

They further took the position that I was a [30] competitor because of my holdings in the National American Bank and under the Louisiana Corporation Act, that a competitor had to have 25 per cent of the stock of the bank in order to look at the books.

This case is now on appeal from the lower court, that is in regard to our efforts to see the books of the Whitney National Bank. This suit was filed in order that we might see if there were any more dealings like the one Mr. Berry made with one of his directors and in order that the stockholders might file a suit to recover that money.

I would like to tell you gentlemen now if this is turned down, I am going to bring a suit for the stockholders of the Whitney National Bank to recover what I believe to be approximately \$1,800,000 that went into that land deal.

We have several witnesses who will testify they were unable to bid on the property or unable to buy, even though they were willing to pay more money than was paid by the directors of the Whitney National Bank.

I want you to know that I have a letter in this file from Mr. John Schwegman, who is a large chain operator of grocery stores, super markets. I have his letter under his own signature.

I am also enclosing the editorial of the paper, St. Bernard Voice, that I spoke to you a moment ago about.

Seven, I am also enclosing a complete set of all the [31] correspondence which was exchanged between myself and Mr. Berry in this proxy fight. I trust that you gentlemen will not allow the Whitney National Bank to form this



holding company because we believe that, at this time, all they have is a mythical corporation they are trying to put into a holding company.

Eight, I believe when Congress adopted cumulative voting in national banks, they did so in order to protect the small stockholders and here comes an outfit trying to circumvent the laws of Congress.

This was best demonstrated by the Whitney National Bank on January 9, the last annual meeting of the Whitney National Bank, when they reduced the number of directors from 20 to 7 in order to prevent minority representation on the board of the Whitney National Bank.

We are positive that this is the only bank in the country of its size that has as few as 7 directors at this time.

We believe that when Congress said there should be not less than 5 nor more than 25 directors, that Congress meant that the minimum would be used in the formation or the organization of a bank but did not mean reducing the number of directors on the board of any national bank in order to prevent minority representation on that board.

To show what puppets were serving on that board, Mr. Berry had them accept his decision to cut that board as though they were all employed as regular employees of the Whitney [32] National Bank.

Therefore, gentlemen, I hope you will prevent the Whitney National Bank from forming this holding company.

Nine, at this point I respectfully request of you gentlemen, all of whom are well voiced in the banking practices existent throughout this nation, that you search your memories and knowledge to see whether or not you can point to any one single interest in which the board of directors of any large institution has been decreased by even 1, 2, 3, 4, or 5 directors.

When Mr. Berry moves, he goes all the way. He reduced the board of this bank 65 per cent by the stroke of his pen, in one single instance, on one single day.

Gentlemen, there has to be a reason and I submit that in this instance, both are ulterior in nature.

Ten, Jackson, Payne, and Webster released a statement that they were unable to obtain information from the Whitney National Bank. The information they were seeking from the bank was the income from oil and gas properties. And, gentlemen, I examined their application. In no place



do they show what they received from oil and gas, or what they received from the rental of real estate.

As you know, several of the banks in New Orleans closed during the banking holiday because they were heavily loaded with real estate. All of these banks have paid the depositors their [33] money back, plus the interest, and the stockholders have been paid a lot of money.

The Whitney National Bank had a lot of these properties. Have they paid anything? They had maintained that \$4 dividend until I got on them—and then what happened? They raised it to \$12, and they said I had nothing to do with it.

Gentlemen—but I want to tell you what they did raise, they raised Mr. Berry's salary. He couldn't get along on what he was getting when he originally started. He had to get additional money. But the stockholders had to sit there and wait.

Now, I heard him talk about an aggressive bank. I have some figures here, gentlemen.

I am not going to use the National Bank of Commerce because they started another bank in Jefferson Parish. I am going to use the High Bunyun National Bank in New Orleans.

In 1951, they were a \$155.1 million bank; in 1960, \$170 million, an increase of over 38 per cent.

First National Bank of Atlanta, in 1951, \$341 million; 1960, \$448.4 million, an increase of 30 per cent.

First National Bank of Dallas, 1951, \$508 million; 1960, \$870.9 million, an increase of 68 per cent.

Republic National Bank of Dallas 1951, \$459 million; 1960, \$1.012 billion, over 100 per cent increase.

And now we come to the "aggressive" Whitney National [34] Bank, 1951, \$385 million; 1960, \$425 million, an increase of 15 per cent.

Now, gentlemen, I spoke to you about that charter. There are some things in here I want to tell you about.

I do not believe that you gentlemen will recommend or will let them adopt this charter for a holding company, because I know that with these provisions in the charter, that you yourself wouldn't buy any stock in it. And I have enough faith in you gentlemen that you wouldn't let someone form a corporation that would hurt other people.

I want to read it to you if I may.

This is Article VIII:

"All powers of the corporation shall be vested in a Board of Directors composed of not less than three nor more than twenty-five, the precise number of said Directors within said limit to be fixed by the Directors."

In other words, to be fixed by themselves.

Now, gentlemen, here is a lulu:

"Directors of the corporation need not be stockholders."

Now, for what earthly reason would a man want to serve on a board that is not a stockholder? Or unless he was trying to please the president of that corporation, or for a monetary consideration?

Going a little further, gentlemen:

"Any Director absent from a meeting may be [35] "represented by any other Director or shareholder, who may cast the vote of the absent Director according to written instructions, general or special, of said absent Director."

Lo and behold, the man running this corporation can give him written instruction, have him sign his name, go up on the second floor and hold a meeting with his secretary.

I tell you, this is ridiculous, to say the least.

Gentlemen, it is in here, I am going to read you another paragraph in here that is really good. It is Article VI:

"The authorized capital stock of this corporation is fixed at \$1,120,000 shares of common stock, without nominal or par value. Every share shall be equal in all respects to every other share. No transfer shall be binding upon the corporation unless recorded upon its books. All shares shall be fully paid for and non-assessable."

You gentlemen know better than that, because if the National Bank goes under, you can assess the shares of a holding company.

Now listen to this:

"Without necessity of action by the shareholders, shares of stock without par value may be issued by the corporation, from time to time"—without action by the shareholders—"for such consideration as may be fixed, from time to time, by the Board of Directors, and any and all such shares so issued, if the full fixed consideration, whether

cash and/or property [36] "and/or good will, for such shares has been paid or delivered, shall be deemed full paid stock and not liable to any further call or assessment, and the holder of such shares shall not be liable for any further payment thereon."

They can issue it for what they want to even though they are not stockholders.

Of course, it would not affect them if they were directors and they wanted to issue it, it wouldn't be hurting them; they wouldn't be diluting their stock, they don't have any.

Now, gentlemen, believe me, if they are allowed to go ahead with this charter, I am very active in 10 or 15 corporations, but in the future if I organize a corporation and this is passed, I am going to copy this corporation charter in toto and I am going to advertise that it was approved by the law firm of Monroe and Lemann, that it was passed upon by 75 per cent or over 75 per cent of the stockholders of the Whitney Bank, and it was approved by the Board of Governors of the Federal Reserve System.

Gentlemen, this is a very dangerous thing and I know that you gentlemen haven't looked at it—I know you haven't—and I wish you would before you pass on it, and I know you will.

Now, gentlemen, all the rest of the exhibits, including the land deal that I put out in this brochure (indicating), are in this file.

I want to tell you that I appreciate the opportunity of [37] appearing before you. I want to thank you. And if there is any question in my humble way I can answer, I will try to do it.

Thank you very much.

Chairman Martin: Any questions? Are there any questions anyone would like to ask?

Governor Robertson: I would like to ask a question.

You have in front of you the charter of the holding company, I take it.

Mr. Roussel: Yes, sir.

Governor Robertson: Is there any provision in that for cumulative voting?

Mr. Roussel: No, sir. None at all. It has been abolished altogether, sir.

Now, that is the idea, gentlemen. The Whitney Bank

has—who knows how many million dollars worth of assets. We have never been able to find out.

Now, when he tells you that the bank has been earning so much, it is not in the application downstairs how much is coming from oil and gas. And I know that there is a good bit of money coming from oil and gas.

But Mr. Sehrt, who is a stockholder, asked that question at the annual meeting and Mr. Berry told him, "Why, you represent the opposition. I don't know if I want to tell you that."

Gentlemen, as a stockholder, I have never been able to find that out and I have been trying, believe me. But I tell [38] you, if you leave this thing just like it is, I assure you I am going to find out—because I am going to find out in a court-house.

Chairman Martin: Does anyone else want to ask Mr. Roussel a question?

Mr. Roussel: Gentlemen, I would like to file, Mr. Chairman, if I may, all of these exhibits.

Chairman Martin: We will receive them all.

Mr. Roussel: Thank you, sir.

Mr. O'Connell: Mr. Chairman.

Chairman Martin: Yes, Tom.

Mr. O'Connell: Inasmuch as Board's counsel or the staff have not seen these exhibits, may I recommend that they be received as you have indicated, Mr. Chairman, subject to the Board's determination of the relevancy and pertinency to the issues involved in this hearing.

Chairman Martin: All right, it is so ordered.

Did you wish to say something, Mr. Sehrt?

Mr. Sehrt: Yes, sir, I certainly do.

May I proceed, sir?

Chairman Martin: Yes.

#### ORAL STATEMENT OF CLEM H. SEHRT, SEHRT & BOYLE

Mr. Sehrt: Mr. Chairman and members of the Board of Governors, I represent the minority, practically, that voted at the Whitney Bank meeting and, without the necessity of listing to you each and every client that I represent, among them is [39] Mr. Roussel.

I have read with a great deal of interest the plan and the application which has been submitted by the Whitney and I have some comments regarding the plan, because, while it is

apparent that the Whitney National Bank is forming a holding company to evade or avoid or to dispense with cumulative voting, nevertheless I say that the application does not conform to the law and the statute.

I hope in my humble way to be able to convince you that this application does not conform to the law.

Answering Governor Mills's question about the Parish of Jefferson, in our home state a parish is similar to a county in most states. Jefferson Parish would be part of the metropolitan area of New Orleans. However, it is a separate and distinct parish and under statutory state law, you cannot have a branch in a parish other than the parish in which that particular bank is operating.

I don't think that counsel for the Whitney or Mr. Berry would dispute the fact that he could not, as such, open a branch in Jefferson Parish. I must concede that he would have to either form an affiliate, such as the National Bank of Commerce has accomplished, or they would have to get into the Jefferson Parish area by some other manner or formation of a bank.

My appreciation of this application, the substance of it, was set forth in a communication which I sent to Mr. Saxon, [40] the Comptroller of the Currency, under date of December 22, 1961, copy of which I forwarded to this Board, which I understand from your counsel will be available for your examination.

In order to approach this thing from the standpoint of whether or not this application is a valid application conforming to the law and whether or not it should be considered, I must concisely state what Whitney attempts to do here.

The plan provides for the Whitney National Bank to furnish \$350,000 in exchange for 5600 shares of Whitney Holding Company stock.

The 5600 shares would be distributed to all of the shareholders of the Whitney National Bank in the proportion of 1/20 of one share to each share of the Whitney National Bank. The Whitney Holding Company with the \$350,000, which it receives from the Whitney National Bank, would use those funds for the organization of the Crescent City National Bank, and would receive in return 112,000 shares of the Crescent Bank at \$2.50 par value.

The Whitney National shareholders would surrender all

of their shares to Whitney Holding Company and receive in exchange 9/920 shares for each share he rendered.

The net effect, finally, would be that the Whitney National Bank shareholders would have 10 shares of the Holding Company stock for each share of Whitney National Bank stock.

Now, that is the plan. That is the substance of the [41] plan and that is the net result if the plan is accomplished.

The Whitney National Bank has presented to the Comptroller a set of articles of association in which it says, "We propose to form a bank—to wit: for the sake of convenience—called Crescent, and here are our articles of association."

Now bear in mind, gentlemen, that bank has not come into being. That bank does not exist. It is merely a set of articles of association signed by certain directors and submitted to the Comptroller under a form that would conform to the National Banking Laws, either acknowledged before an officer or a notary public qualified to give an oath.

However, the Crescent Bank is not in being. The Comptroller has not given it a permit. It is merely a paper corporation filed with the comptroller.

The Crescent has no stockholders. The only funds that would be available to Crescent through the holding company situation—which of course has not been approved by this body, which you are here today for—the funds are taken from where? The funds are taken from the Whitney National Bank's treasury to create what? To create a symbol, to create a set of articles of incorporation which they say is a proposed bank, and they take the money out of one pocket and they put it over here and they say, "We propose to create the Crescent Bank."

Now the Crescent Bank does not exist. It has no stockholders. It has no depositors. It has no place from which [42] it can do business. It cannot even do business until such time as the Comptroller says, "I give you a permit; you have a right to function."

It exists how? It exists by virtue of the funds, the funds supplied to it by Whitney National.

Now, the statute provides—and I have examined all of the hearings under the Holding Company Act and I have examined these committee reports, and I can find nowhere in these committee reports or in these hearings or in this statute where there is provision for the consolidation of a



nonexistent bank, for the consolidation of one bank with a bank that has never functioned, with a bank that has never existed for a day, with a bank that doesn't have a single stockholder, with a bank that has never functioned.

I say the purpose of this holding company statute and the general provisions of the law is that a consolidation must take place of two banks that exist in law and in fact. And I say, gentlemen, that Crescent does not exist in law until such time as the Comptroller gives them their permit, and it does not exist in fact because it has never functioned a day, it has had no place from which to function, it has had no headquarters, it has no minute book, it has no stock book, it has no minutes of its board of directors—it is a myth. It is a paper corporation, a shell—which they say will come into being.

Now, how do they say it comes into being? They have a [43] long agreement here which they call a consolidation agreement and which in effect accomplishes exactly what I set forth in brief at the outset of my discussion.

If this plan is adopted and the shareholders have voted it, what happens? The charter—this piece of paper (indicating) filed with the Comptroller—becomes the charter of the consolidated bank and the name, Crescent, is changed to what? The name Crescent is changed to Whitney National Bank. And what is that? The name Crescent is changed to the Whitney National Bank, which is the exact bank which exists today—the Whitney National Bank.

So I have branded this in a communication to the Comptroller and I have told him verbally—and I tell you, gentlemen—that this is a legal maneuver, it is a scheme to evade the provisions of the Holding Company Act and to accomplish a holding company not by the means set forth by the Congress of the United States. Because you begin with a Whitney National Bank which itself takes its own funds, which it doesn't have a right to do under the banking laws, and puts them over here and creates Crescent, and then says Crescent, you merge with us and when we get through merging or consolidating, we are what? We are the same thing we started out with: Whitney National Bank—with the same articles of association and the same charter, the same assets, the same directors, same president, same officers, the same everything.

[44] So I say that this is merely a figment which has been



created to attempt to meet the provisions of the Holding Company Act.

Now I say, further, that in the amendment of 1956—and I am reading from Section 1845, it says that “From and after May 9, 1956, it shall be unlawful for a bank to invest any of its funds in the capital, stock, bonds, debentures, or other obligations of a bank holding company of which it is a subsidiary or any other subsidiary of such bank holding company.”

Now, what would Whitney National Banking if you gentlemen approve this application?

If you approve this application and the Comptroller approves this consolidation and merger, the Whitney National Bank will have accomplished indirectly what that statute prohibits them from accomplishing directly.

They can't invest their money in a holding company. And the statute so provides with the amendment of 1956. But they will have invested their money in a holding company, they will have put \$153,000 in a holding company to create a holding company.

At the conclusion of the maneuver or the scheme, you will have one entity, the same entity that began.

Now, gentlemen, that is not a merger; that is not a merger within the purview of the law.

This act itself sets forth what is a merger and it [45] sets forth what is a consolidation. In brief, under Section 89, it says: “One or more national banking associations with the approval of the Comptroller”—one or more national banking associations with the approval of the Comptroller—“can make a consolidation or a merger.”

You can't merge with yourself. You can't consolidate with yourself. You can't create some figment merely on paper so you can accomplish a merger.

And I say to you gentlemen at the conclusion, you have what? You have the same Whitney National Bank—with what?—with the shareholders no longer owning the shares of the Whitney National Bank, but the shareholders owning 10 shares of the Whitney Holding Company. And the Whitney Holding Company has destroyed, has written out with its pen the right of cumulative voting.

The whole scheme is an evasion, of course, to write out the privilege of cumulative voting.

Now assuming for the sake of discussion that the plan

is approved, which I say it should not be, and assuming that the Comptroller approves the consolidation—and I am satisfied his office has tentatively approved it because your records should show that, and he has told us that they have tentatively approved it which I understand is sort of preliminary approval—assuming it is approved, what does the Whitney Holding Company do? It then takes what? It takes \$650,000 of its funds and it [46] another piece of paper filed in the Comptroller's office—wit: A charter for the Jefferson Bank—which will be its branch in Jefferson if you want to call it such, the branch on the west side of the river if it calls it such.

It again dips into the same funds—of course, it is then a "holding company." It is then in being. And it then exists in fact as well as in law, which it does not now.

I say it does not exist, in fact it does not exist in law as a holding company until you approve it, and Crescent doesn't exist until it has a permit, which it doesn't have. And I say you can't merger with yourself.

But if it is all accomplished, they dip in and create a Jefferson Parish bank or a Jefferson Parish bank and some branches in Jefferson Parish for operation with Whitney funds.

I say to you gentlemen, and I have said it publicly and I have included it in a communication, I don't think that this Board has ever approved such a legal maneuver and I don't think that it is within the realm, nor was it contemplated by the acts of Congress that this type of legal maneuver should be permitted and sanctioned by this Board, to do what? To permit Whitney National Bank to do indirectly that which legally they cannot do directly. And I don't think that you gentlemen should lend yourselves to permit them to do indirectly that which the law directly prohibits them from doing.

I say, gentlemen, that this application, if it is [47] analyzed carefully and if the statute is analyzed carefully, and the purpose and meaning and intent of the Holding Company Act, that it is an invalid application and does not meet the requirement of the statute.

I thank you, gentlemen.

I will be happy to answer any question that you might like to ask me.

Chairman Martin: Does anybody want to ask a question of Mr. Sehrt?

Governor Mitchell: I would like to ask a question of both of these gentlemen, or a couple of questions.

If the right of cumulative voting were retained, would you oppose this plan or the Whitney to expand in the Jefferson Parish?

Mr. Roussel: I would like to answer your question on that, sir.

If you will put in that holding charter that they should have a sufficient amount of directors and they would have cumulative voting, I would be for it. Because the small minority stockholder would then have a chance to fight it. But if they remove cumulative voting—as you know, it is pretty hard fighting a bank of that kind. They have a guy selling a piece of land to their own directors and they tell you there is nothing wrong with that.

I know not one of you gentlemen—and I would be [48] willing to bet—would say a corporation should sell something to its own director. I know you wouldn't do that.

If that were put in there, if you would make them put in that holding company that they would have a fair number of directors for the size of the corporation it is, and cumulative voting, I will be for it—I will be for it.

Mr. Sehrt: Also, of course, you would not want them to permit a director to give his fellow director a proxy.

Mr. Roussel: That is another thing.

Mr. Sehrt: And you would not want a director—several directors—to give their proxy and the president have the privilege—I am not saying he will do it, but he will have the privilege of soliciting them and going and holding a meeting.

I am not saying I am for what Mr. Roussel just said. I will not be for it because I say it does not conform to the law. I will have to tell you that I would have to be consistent and say it does not conform to the law; they can't accomplish it in this way.

Governor Mitchell: I have one further question.

Chairman Martin: All right.

Governor Mitchell: Do either of you gentlemen own or, say, control associations or companies that own stock in other banks in New Orleans metropolitan area?

Mr. Roussel: Yes, sir, I do—not control; I don't [49] have absolute control of any bank.

Governor Mitchell: But you do own stock in other banks?

Mr. Roussel: I own stock in four other banks, sir.

Governor Mitchell: In the New Orleans metropolitan area?

Mr. Roussel: No, three in the metropolitan New Orleans area and one outside the metropolitan area.

Governor Mitchell: I see.

Mr. Sehrt: And, sir—

Governor Mitchell: And some of these banks are in Jefferson Parish?

Mr. Roussel: Yes, sir, one in Jefferson Parish, the Merchants Bank.

Mr. Sehrt: In answer to you, sir, I own no stock in any bank in Jefferson Parish.

I am a small stockholder in Whitney National Bank. I hold several hundred shares of stock in the National American Bank.

I do own some stock in a bank in St. Bernard Parish which is the other end of the metropolitan area, not in the direction—going down river.

Governor Mitchell: That is all I have.

Mr. Sehrt: I might add, because my opponents might feel I have failed to add it, my firm is attorney for the [50] down-river bank, the Peoples Bank and Trust Company. I am associated with the firm, Sehrt and Boyle. I am senior member of that board. And we are also attorneys for the National American Bank. I am a director for the National American Bank.

I wanted the record to be complete, sir.

Chairman Martin: Any other questions? (No response)

If not, thank you, Mr. Sehrt and Mr. Roussel.

Mr. Sehrt: Thank you.

Mr. Roussel: Thank you.

Chairman Martin: Now shall we go on to Mr. Passera before we give Mr. Berry and Mr. Monroe a chance to rebut?

Mr. O'Connell: Yes, sir.

Chairman Martin: Would you like to proceed, Mr. Passera?

Mr. Passera: If I may, sir.

Chairman Martin: Right.

#### ORAL STATEMENT OF VICTOR J. PASSERA, JR., PRESIDENT, THE NATIONAL BANK OF COMMERCE IN JEFFERSON PARISH.

Mr. Passera: If I may, I will stand. I am not going to take that much time.

My name is Victor J. Passera, Jr. I have the privilege

of being the President of the National Bank of Commerce in Jefferson Parish.

I sincerely appreciate, gentlemen and Mr. Chairman, the kindness of the honorable members of the Board to let me speak—and, Mr. Berry, I appreciate your courtesy.

My appearance, gentlemen, here today—first may I [51] say that I, of course, feel a little bit awed in the presence of such distinguished gentlemen. I must confess that.

My appearance today is motivated by my responsibilities to the shareholders of the National Bank of Commerce in Jefferson Parish, to the Directors, to the members of my staff; I'm also motivated by my own responsibilities to the office which I hold; and beyond that, in the public interest of the shareholders, the residents of the Jefferson Parish area who have interest in the other parish banks.

Our opposition to the holding company is primarily two-fold:

First, for the past two years, 1960 and 1961, the deposits and the earnings of the parish banks have not been appreciably great.

Secondly, we feel that there is perhaps a circumvention of Section 7 of Regulation Y.

We feel that at this particular moment, there is no need for additional new banking facilities within Jefferson Parish, specifically the east bank.

We also feel that such creation of new banking facilities would act as a deterrent on the growth of the existing banks as well as the earnings of the existing banks.

I sincerely appreciate your kindness.

Governor Balderston: Mr. Chairman, may I ask Mr. Passera a question?

[52] Mr. Passera: Surely.

Governor Balderston: In the communication on which you were one of the signers, you indicated that there is, and I quote, "no indication of development, either industrially or residentially, in the areas of the proposed bank and its branch."

Now, that statement seems to contradict something that Mr. Berry told us earlier.

Mr. Passera: At the time of the signing of that, sir, that was absolutely true.

The economy of Jefferson Parish has remained at a standstill and was at a standstill during the two years that I have mentioned—standstill in that sense of the word.

Surely there was growth in the parish, but not the astounding or astronomical growth the parish had experienced, the east bank specifically, prior to the year 1960.

At that time, the growth had been retarded, was retarded. Since that time there are, as Mr. Berry mentioned, several industries moving into the parish and probably will become existing after the first of the year.

Does that answer your question, sir?

Governor Balderston: Thank you.

Commissioner Martin: Does anyone else want to ask a question?

Governor King: I would like to ask one question.

[53] Mr. Passera: Yes, sir.

Governor Balderston: Recognizing the fact that your own institution and the proposed institution would be more or less arms of both large and strong organizations, would you really think that because one necessarily would happen to be in first, it should more or less pre-empt the territory for others that were strong and felt they could more or less subsidize to some extent a new institution which would give some additional competition, certainly—certainly it would affect the other banks in the area. But assuming that one fairly large and strong institution went in, would you really think it was fair to deny another entry? Recognizing the fact that they were both more or less arms of strong banks?

Mr. Passera: Mr. Governor, the answer to your question is obviously "no," sir; we have no pre-empting rights.

Chairman Martin: Are there any other questions of Mr. Passera? (No response)

Thank you, Mr. Passera.

Mr. Passera: Thank you, sir.

Chairman Martin: All right, we will give Mr. Monroe and Mr. Berry time for rebuttal.

#### REBUTTAL STATEMENT OF MALCOLM L. MONROE, MONROE & LEMANN, NEW ORLEANS, LOUISIANA

Mr. Monroe: If I may take just a moment.

With respect to Mr. Roussel's statements, all but the items with respect to the charter that he referred to are matters governing the internal control of the Whitney Bank, all are [54] matters that have been fully taken up or disclosed or subject to examination by the Comptroller. The Comptroller's files have full reports. They are not within the

desires, as I understand it, of this Board to go into the matters of bank administration. And the Comptroller's examiners have been into every matter that has been discussed by him.

With respect to the charter, inasmuch as that is a matter that has been filed here and was filed here on September 1st, under cover of our letter, and is already in the record, I would like to read from my letter momentarily, briefly, transmitting that to Mr. Denmark, my letter of September 1st. I said, in transmitting the charter:

"As I explained in previous conferences with representatives of the Federal Reserve Bank and the Comptroller's office, this charter, of course, is the skeleton charter filed primarily for the purpose of the holding corporation's name. It is contemplated that upon basic organization meeting of the board of directors of the Whitney Holding Corporation, the real parties in interest will appear. The form of the charter is simply taken from the standard, recommended form of Louisiana charter and contains routine provisions."

It is a charter I drew myself. It is taken out of the form book prepared in the form suggested by Mr. Charles E. Bunbar, who is now deceased, the leading corporation attorney and professor at GLM Law School. That is where those provisions come from [55] that are represented to you as being so drastic by Mr. Roussel.

I have also said to your staff that if the Federal Reserve believes that any particular provision should be amended in order to be more in conformity with the policy of the Federal Reserve, I am sure this can be easily carried out.

I would say about the same proportion of Mr. Schrt's remarks deal with matters that are under the jurisdiction of the Comptroller. The only matter that the Whitney Holding Corporation is before this Board for is the holding corporation's application to form the bank in Jefferson Parish.

As Mr. Berry has already so carefully pointed out, we would have proceeded with the complete reorganization of the Whitney into a holding company in Avoyelles Parish. We were advised it was completely legal by the attorneys of the Comptroller. But the Comptroller advised us that he did not want us to reorganize the bank in Avoyelles Parish unless we were assured of going forward with the meat of the program, which was moving into Jefferson



Parish, and therefore his approval has been conditional on the approval of this board to go into Jefferson Parish. However, the questions addressing themselves to the legality and the wisdom of reorganizing the Whitney in Orleans have been passed on and have been up before the Comptroller for more than 6 months and have been passed on by him and are within his jurisdiction.

We have handed you his approvals in the first two [56] exhibits we handed you this morning showing that he has approved this entire program as a banking program. And from his point of view, he has approved the organization of a bank in Jefferson Parish as a desirable banking feature.

I don't think I have anything more to say except the matter before you now is going into Jefferson Parish and certainly there have been many examples of applications to you for holding corporations to form banks in other areas. Naturally they take their own assets to form it.

We feel that one of the strengths; the large strength in our position is that we are forming a new bank and not absorbing an existing institution and thereby eliminating that competitor.

I would like to finally point out that our charter for the Crescent City Bank is executed, is on file with the Comptroller; it is a legal entity. The application to consolidate with the Whitney has been executed by both banks, both meetings, stockholder meetings, have been held and they have overwhelmingly approved it, and that is just ready for routine completion.

I would like this record, if I may, to stay open for the purpose of filing the final executed copy in the record as a routine matter of the charter of the Crescent City Bank.

Chairman Martin: Does anyone want to ask any questions?

(No response)

[57] Thank you very much.

Mr. Monroe: Thank you very much.

Chairman Martin: Tom, do you want to comment at this juncture?

Mr. O'Connell: Mr. Chairman, the Board has now received presentations by all persons who have requested the right to make the same and, in addition, has received Mr. Passera's statement.

Unless there are other matters by the Board, it would appear appropriate you might close the proceedings.

Chairman Martin: Do you want to make any further statement for the record or have you covered everything?

Mr. O'Connell: I believe I have covered everything that should be covered, Mr. Chairman.

Chairman Martin: Would anyone else, either Mr. Sehrt or Mr. Roussel, like to say anything further?

Mr. Roussel: No, thank you, sir.

Mr. Sehrt: No.

Chairman Martin: And you have nothing further, Mr. Berry?

Mr. Berry: No, thank you. I think we have taken enough of your time.

Chairman Martin: Thank you very much.

The meeting is adjourned.

(Whereupon, at 11:35 a.m., the oral presentation in the above-entitled matter was concluded.)

Filed June 20, 1962

EXHIBIT 5

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
Washington 25, D. C.

Address Official Correspondence to the Board

May 3, 1962.

Comptroller of the Currency,  
Treasury Department,  
Washington 25, D. C.

Dear Sir:

The Board of Governors has today approved the application of Whitney Holding Corporation, New Orleans, Louisiana, for permission to become a bank holding company by acquiring the stock of Crescent City National Bank and Whitney National Bank in Jefferson Parish.

Enclosed are the Board's Order of this date, the accompanying Statement, and the press release on this action. Also enclosed are a Concurring Statement of Governor Mitchell and a Dissenting Statement of Governor Robertson.

Very truly yours,

MERRITT SHERMAN,  
*Secretary.*

Enclosures

## FEDERAL RESERVE

For immediate release

May 3, 1962.

The Board of Governors of the Federal Reserve System today announced its approval of an application by Whitney Holding Corporation, New Orleans, Louisiana, for permission to become a bank holding company by acquiring substantially all of the stock of a bank that would continue the business of the existing Whitney National Bank of New Orleans, under that title, and substantially all of the stock of the Whitney National Bank in Jefferson Parish, Louisiana. The Whitney National Bank in Jefferson Parish is a new bank to be located in a part of the New Orleans metropolitan area lying immediately west of that city. Attached are copies of the Order and Statement of the Board, the Concurring Statement of Governor Mitchell, and the Dissenting Statement of Governor Robertson.

Attachments

## UNITED STATES OF AMERICA

BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE  
SYSTEM

Washington, D. C.

In the Matter of the Application of: WHITNEY HOLDING CORPORATION for approval of its becoming a bank holding company by acquiring the stock of Crescent City National Bank, New Orleans, Louisiana, and Whitney National Bank in Jefferson Parish, Jefferson Parish, Louisiana.

ORDER APPROVING APPLICATION UNDER BANK HOLDING  
COMPANY ACT

There has come before the Board of Governors, pursuant to section 5(a)(1) of the Bank Holding Company Act of 1956 (12 USC 1842) and section 222.4(a)(1) of Federal Reserve Regulation Y (12 CFR 222.4(a)(1)), an application on behalf of Whitney Holding Corporation, New Orleans, Louisiana, for the Board's prior approval of action whereby Whitney Holding Corporation would become a bank holding company by acquiring substantially all of the vot-

ing stock of (1) the Crescent City National Bank, New Orleans, Louisiana (a proposed new bank), into which would be consolidated the existing Whitney National Bank of New Orleans, under the latter title, and (2) the Whitney National Bank in Jefferson Parish, Jefferson Parish, Louisiana (a proposed new bank). A Notice of Receipt of Application was published in the Federal Register on July 28, 1961 (26 Federal Register 6792), which provided an opportunity for submission of comments and views regarding the proposed acquisitions, and the time for filing such comments and views has expired and all comments and views filed with the Board have been considered by it. Pursuant to Order published in the Federal Register on December 23, 1961 (26 Federal Register 12312), a public proceeding with respect to the application was held before the Board on January 17, 1962 to provide a further opportunity for the expression of views and opinions by interested persons.

It Is Ordered, for the reasons set forth in the Board's Statement of this date, that said application be and hereby is granted, provided that the acquisitions approved herein shall not be consummated (a) sooner than seven calendar days after the date of this Order or (b) later than three months after said date, and provided further that Whitney National Bank in Jefferson Parish shall be opened for business within six months after said date.

Dated at Washington, D. C., this 3rd day of May, 1962.

By order of the Board of Governors.

Voting for this action: Chairman Martin, and Governors Balderston, Mills, Shepardson, King, and Mitchell.

Voting against this action: Governor Robertson.

(Signed) MERRITT SHERMAN,

*Secretary.*

(Seal)

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

## APPLICATION BY WHITNEY HOLDING CORPORATION FOR PERMISSION TO BECOME A BANK HOLDING COMPANY

## STATEMENT

Whitney Holding Corporation, New Orleans, Louisiana ("Applicant"), has applied to the Board of Governors, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 (the "Act") for approval of action that would cause it to become a bank holding company under the Act, namely, its acquisition of all of the stock of Whitney National Bank of New Orleans ("Whitney New Orleans") and all of the stock of Whitney National Bank in Jefferson Parish, Louisiana ("Whitney Jefferson").

Whitney New Orleans is by far the largest banking institution in the City of New Orleans and the State of Louisiana, and is one of the largest banks in the South. New Orleans, with a population of 627,525 according to the 1960 census, is a major seaport and financial and industrial center.

Whitney Jefferson is a new bank, organized by Applicant, and has not yet commenced operations. It is to be located in an area known as the East Bank of Jefferson Parish ("East Bank"), which adjoins the City of New Orleans on the west.

Under the law of Louisiana, a bank may not establish branches outside of the parish in which its head office is situated. (A Louisiana "parish" is comparable to a "county" in other States.) The boundaries of Orleans Parish are coterminous with the boundaries of the City of New Orleans, and consequently banks situated in New Orleans (including national banks) may not establish branches beyond the city limits.

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\* The application refers to "Crescent City National Bank" rather than to "Whitney National Bank of New Orleans". However, Crescent City National Bank is only the temporary title of a bank that will continue the business of the present Whitney National Bank of New Orleans under the latter title. For the sake of clarity, this statement refers to Whitney National Bank of New Orleans and disregards the temporary title "Crescent City National Bank".

Like many other large American cities, the City of New Orleans has become the central portion of a metropolitan area that extends far beyond the municipal boundaries. A large part of the expansion of population and business in New Orleans metropolitan area has taken place in Jefferson Parish, which adjoins the city on the west and south, as well as into St. Bernard Parish, which lies to the east. The West Bank area of Jefferson Parish is separated from most of New Orleans by the Mississippi River, but the East Bank area (in which Whitney Jefferson is to be situated) is not physically separated from New Orleans, but forms a continuous and homogeneous westward extension of that city.

*Views and recommendations of the Comptroller of the Currency.*—In accordance with the requirement of section 3(b) of the Act, the Comptroller of the Currency was asked to submit his views and recommendations with respect to the pending application. In a letter dated October 11, 1961, Comptroller of the Currency Ray M. Gidney recommended approval.

*Statutory factors.*—Section 3(c) of the Act requires the Board to take into consideration the following five factors:

(1) the financial history and condition of the holding company and banks concerned; (2) their prospects; (3) the character of their management; (4) the convenience, need, and welfare of the communities and the area concerned; and (5) whether or not the effect of the acquisitions would be to expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking.

*Discussion:*—The stated purpose of the proposed holding company system is to enable an organization centered about Whitney New Orleans to provide banking services not only through its existing 12 offices within the City of New Orleans but also through offices in the East Bank of Jefferson Parish. The holding company system will be under the direction of the present executive management of Whitney New Orleans; in fact, for present purposes the holding company itself is simply the means by which Whitney banking offices may be established and operated in East Bank. Consequently, the character of the management and the pros-



pects of the Applicant and its two proposed subsidiary banks may be evaluated largely on the basis of the financial history and condition, character of management, and prospects of Whitney New Orleans.

The financial history of Whitney New Orleans has been satisfactory. The condition of that bank is sound and its management is regarded as satisfactory. Accordingly, it is believed that the management of Applicant and Whitney Jefferson will be satisfactory and the prospects of the holding company, which depend principally upon the prospects of Whitney New Orleans, are favorable.

To the extent that the prospects of Whitney Jefferson depend upon the quality of its management, those prospects also are favorable, since Whitney Jefferson will be subject to general policy direction by Applicant, and Applicant may be expected to provide competent local management for Whitney Jefferson. However, the prospects of Whitney Jefferson, as a separate banking institution, also depend, to a large degree, on the extent to which it can attract deposits, make profitable loans and investments, and otherwise conduct its business safely and profitably.

In the decade 1950-1960, while the population of the City of New Orleans increased 10 per cent (from 570,000 to 628,000), the population of the East Bank of Jefferson Parish increased 128 per cent (from 60,000 to 137,000). Although there can be no assurance of the continuance of this exceptionally rapid rate of growth, the geographical situation in the New Orleans area is such as to create a substantial likelihood of considerable further growth in East Bank. In addition, it is important to note that Whitney New Orleans presently holds deposits of individuals, partnerships, and corporations, emanating from East Bank, in an aggregate amount exceeding 30 per cent of such deposits held by all banks having their head offices in East Bank. It is reasonable to anticipate that a substantial portion of East Bank deposits in Whitney New Orleans will be transferred to Whitney Jefferson when it opens for business. Because of this circumstance, as well as the relationship that would exist between Whitney Jefferson and Whitney New Orleans, it is concluded that the prospects of the former, from this viewpoint also, are favorable, despite the increase in recent years in the number of banking offices situated in East Bank.

If the proposed holding company system is created, Whitney New Orleans will continue to render, through its F2

offices in the city, banking services of the scope and character presently rendered by it. Accordingly, consummation of the proposal will not affect the convenience, needs, or welfare of the New Orleans area, as far as the future operations of Whitney New Orleans are concerned.

Whitney Jefferson, however, will be a new banking institution, and therefore its establishment necessarily will affect the convenience, needs, and welfare of the communities and the area it will serve.

The proposed head office of Whitney Jefferson will be situated approximately one mile from the nearest competing banking office. Its establishment and operation, therefore, will serve the convenience of residents and business establishments in its immediate neighborhood, and will also provide a readily available alternative source of banking services to residents and business establishments in a wider area. At present, only two banks serve the area within four road miles of the proposed head office location of Whitney Jefferson. Both of these are well-established institutions, and the entry of Whitney Jefferson, in addition to the added convenience, may also contribute to the welfare of the area by strengthening local banking competition with resulting improvement in the scope and quality of services rendered by each of the competing institutions.

In addition to its head office, Whitney Jefferson has applied to the Comptroller of the Currency for authority to establish a branch in the Airline Park Shopping Center, about three and one-half miles northwest of its head office; the latter would be located near the Mississippi River in a more industrialized section of East Bank. The branch application is pending before the Comptroller of the Currency, who has not, as yet, either approved or disapproved the proposed branch establishment.

On March 1, 1962 the new Metropolitan Bank of Jefferson opened for business in the Airline Park Shopping Center, which would also be the location of the proposed branch of Whitney Jefferson. Any immediate contribution by such branch of Whitney Jefferson to the convenience, needs, and welfare of the area necessarily is considerably lessened by the fact that the area is already served by a banking institution. In addition, there may be some question as to whether adequate and sound banking, as well as the public interest generally, would be promoted by establishment, in

the Airline Park Shopping Center, of a banking office affiliated with the largest bank in Louisiana, so soon after the opening there of a new independent bank. However, the unfavorable significance of this factor is somewhat lessened by the rapid growth of the East Bank area, which suggests a greater than usual likelihood that two new banking offices in the same area might achieve, within a reasonable time, a scale of business that would permit both to operate soundly and profitably.

It is also significant that the Comptroller of the Currency has held the branch application in abeyance since before the establishment of the new Metropolitan Bank of Jefferson. Primary responsibility for deciding whether establishment of the branch would be in the public interest lies with the Comptroller, and it seems reasonable to assume that the branch will not be authorized if its presence would threaten the sound and serviceable operation of the newly-established bank in the Shopping Center.

Perhaps even more important than service rendered to new customers, from the viewpoint of convenience and welfare, is the service that Whitney Jefferson could render to individuals and business organizations in East Bank that already are customers of Whitney New Orleans. As mentioned, Whitney New Orleans, through its offices in the city, draws a substantial amount of deposits from East Bank. Since Whitney New Orleans draws this business despite the lesser convenience, for customers in East Bank, of dealing with a banking office in New Orleans rather than one in East Bank itself, it may be inferred that doing business with Whitney offers to its customers in East Bank benefits that are sufficient, in their judgment, to outweigh the lesser convenience.

Although some of Whitney New Orleans' East Bank business may remain with that institution, it is almost certain that a substantial part will be transferred to the affiliated Whitney Jefferson. Whitney customers in East Bank, therefore, will benefit from the convenience of doing business at a local office that can furnish, more conveniently than at present, the services that originally gained this business for the Whitney organization. Whatever special characteristics of Whitney service drew a considerable volume of East Bank business to Whitney offices in New Orleans will now become available not only to existing Whitney

customers but to others in East Bank who have not heretofore found it convenient or feasible to deal with Whitney New Orleans.

In this aspect, the pending proposal to establish banking facilities in East Bank through the holding company device is due to the natural and legitimate desire of a bank in an expanding metropolitan area to furnish its services more conveniently to customers situated in a section that, although outside the corporate limits of Orleans Parish, is realistically an integral part of the metropolitan economy. The laws of Louisiana do not prohibit expansion of a banking organization by this means. In the judgment of the Board, this phase of the proposal is a proper expression of the character of the American business system—in some respects, in fact, it is a matter of economic self-defense—and ought not to be frustrated unless it involves effects significantly detrimental to the public interest.

Under section 3(c)(5) of the Act, the question arises whether Applicant's acquisition of the stock of Whitney New Orleans and Whitney Jefferson would expand the size or extent of the proposed holding company system beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition. Mention has been made of the possible effect of the establishment of the proposed branch of Whitney Jefferson upon adequate and sound banking in its immediate vicinity. Apart from this aspect, it appears that the proposal would add a sound and serviceable institution to the financial organizations situated in East Bank.

From the viewpoint of concentration of banking facilities, the significance of establishment of the proposed holding company system might seem at first blush to be relatively slight. On June 30, 1961 Whitney New Orleans held 39 per cent of total deposits of banks in New Orleans and 44 per cent of all deposits of individuals, partnerships, and corporations. The establishment of the holding company system would not increase Whitney New Orleans' proportion of the city banks' deposits; in fact, the anticipated transfer of some accounts from Whitney New Orleans to Whitney Jefferson would slightly reduce the percentages held by Whitney New Orleans. Initially, the deposit business of Whitney Jefferson may consist largely of such accounts transferred from the affiliated city bank, and it does not appear probable that the predominance of Whitney

banks in the New Orleans metropolitan area will be immediately increased as a result of the instant proposal.

However, the fact that a relatively high proportion of banking resources in the New Orleans metropolitan area is already concentrated in Whitney New Orleans does not demonstrate the propriety of an equal degree of concentration in a holding company system. It has been pointed out that "the Act relates to concentration of banking power, not in the hands of banks, but in the hands of bank holding companies." *Matter of First New York Corporation* (1958) 44 Federal Reserve Bulletin 902, 913-14.

It does not appear to the Board, however, that the degree of concentration of banking resources in the proposed holding company system would be such as to jeopardize the vigor of banking competition either in the City of New Orleans or in East Bank. The management and policies of the holding company system, it appears, would be equivalent to those of Whitney New Orleans. On the record before the Board, it appears that a comparable degree of concentration in that bank has not adversely affected the local competitive situation. In this connection, it is to be noted that there appears to be no trend toward increasing dominance of Whitney in the area; Whitney's share of the total deposits of the metropolitan area diminished from 38 per cent to 35.4 per cent between 1956 and 1961.

Some cases presented to the Board under the Act involve a proposal for holding company acquisition of control of banks that compete with each other. These situations necessarily involve the elimination of some banking competition. No such problem is presented by the pending application. The only existing bank involved is Whitney New Orleans. Consummation of the plan will bring into existence a new banking institution, Whitney Jefferson, which will be an additional competitor in the banking situation in the western sector of the New Orleans metropolitan area. By thus offering the banking public of that district one more alternative source of banking services, the proposal would tend to increase the vigor of competition. Apart from the possible adverse competitive effect of the proposed branch of Whitney Jefferson, previously mentioned, there is no reason to believe that the increased competition would be destructive rather than beneficial.

It is especially noted that East Bank is already served by several offices of a bank that is affiliated with Whitney

New Orleans' largest competitor. Establishment of Whitney Jefferson, therefore, will introduce into East Bank a new and possibly important sort of competition—that is, competition between local banks affiliated with large banks in the nearby city and consequently in a position to offer the special services that may be available as a result of such affiliation.

Viewing the relevant facts in the light of the general purposes of the Act and the factors enumerated in section 3(c), it is the judgment of the Board that the proposed acquisitions would be consistent with the statutory objectives and the public interest and that the application should be granted.

May 3, 1962



## CONCURRING STATEMENT OF GOVERNOR MITCHELL

In my judgment, there are two issues of concern in this case.

The first issue is whether an increase in concentration would come about from approving the application. Whitney presently accounts for about 35 per cent of New Orleans metropolitan area deposits. Whitney's present position is a *fait accompli*: No matter how Whitney Holding Corporation divides its deposit share among the banks it may create, its present share will not be changed. The Whitney organization would *still* have 35 per cent of area deposits even if it were to create and operate a score of banks. This is because the plan of the application does not include purchasing other banks but rather intends de novo facilities to be established in East Bank. Thus, approval of this action will not increase concentration by any meaningful measure whether deposits, loans, assets, or offices are used. Whitney has what it has.

Will "concentration" increase in the future? If Whitney can convince *increasing* numbers of individual and corporate depositors and loan applicants to bank with its new set of offices because it offers better services and more attractive rates, then we might expect its share of deposits and loans to increase. Denying this application on grounds of containing an anticipated increase in "concentration" of this sort would be denying one of the very things this Board is directed to preserve, competition.

The second issue is whether approval of this application would produce an "overbanked" situation in the East Bank of Jefferson Parish.

The use of "overbanking" as a policy criterion may have been justified in a time when the creation of banks was imperfectly regulated and deposits uninsured. The obsolescence of this concept is apparent in today's context of widespread deposit insurance and regulation of entry by State and Federal agencies based on responsible management and adequate capital. To impose *further* restrictions on entry by deciding, ad hoc, that a given area may become "overbanked" if another competitor is admitted is to preserve comfortable closed markets for established institutions. Decisions with this effect can only be hostile to the public interest.

Since this Board does not possess perfect foresight, it



must depend on some rough and general rules of thumb if it is to avoid decisions harmful to the public interest. The fact that the "overbanked" community of today may be the "underbanked" community of tomorrow if the growth of the community is rapid and substantial suggests that such rules of thumb might be formulated in terms of trends in population, in business expansion, and in deposits. Strong upward movements in these indicia would shortly undo any initial condition of "too many" banks.

What can be said in terms of these rules of thumb in the present case? The population of Jefferson Parish has more than doubled since 1950. The Federal Reserve Bank of Atlanta reports that further residential growth in the area is assured. Rising business activity in the East Bank area reflects a growing industrial community. Reserve Board data on deposits of individuals, partnerships, and corporations show that deposits increased by more than 300 per cent and deposits per capita in Jefferson Parish have increased by more than 100 per cent in the past decade, outstripping any other urban parish in the State. The average *annual* rate of deposit growth of First National Bank of Jefferson Parish, of Gretna, was 10 per cent over the 10-year period 1951-61. Merchants Trust and Savings Bank of Kenner has averaged 25 per cent and Metairie Savings Bank and Trust Company 12 per cent over the same period. National Bank of Commerce in Jefferson Parish has averaged 7 per cent in its six years of operation. Taken together, these data indicate that an "overbanked situation" could not exist for long in Jefferson Parish.

Approval of this application will strengthen competition by allowing a New Orleans banking organization to operate through de novo facilities in the rapidly growing East Bank of Jefferson Parish. Rejection of the application would preserve sanctuary for existing Jefferson Parish banks or lead to indirect entry by Whitney through a device with less competitive impact.

May 3, 1962

### DISSENTING STATEMENT OF GOVERNOR ROBERTSON

Whitney National Bank of New Orleans is the largest banking institution of the City of New Orleans and the State of Louisiana. It controls in the neighborhood of 40 per cent of the deposit and loan business of all New Orleans banks—more than the second and third largest banks combined. The proposal before the Board of Governors would place control of this bank in Whitney Holding Corporation and thereby would overcome the effect of the branch banking laws of Louisiana, which prevent Whitney from establishing any offices outside of Orleans Parish (the City of New Orleans). In other words, by this means the Whitney banking organization would escape the legal limitations that now permit it to have offices only within the City of New Orleans.

In my judgment, one of the basic purposes of the Bank Holding Company Act—to prevent undue concentration of banking power in holding companies—would be unjustifiably defeated by approval of the creation of a holding company system to control the predominant bank of a major metropolitan area and additional banks within that area, *unless* such approval is warranted by favorable factors that outweigh this strong adverse consideration.

No such substantial favorable factors have been established in this case. It can hardly be asserted that the East Bank of Jefferson Parish would lack adequate banking facilities unless Whitney Holding Corporation is permitted to establish and control the proposed Whitney National Bank in Jefferson Parish. New banks and branches are being established in East Bank at a quite rapid rate, and the neighborhoods in which Whitney Jefferson would have its offices already have banking facilities conveniently available.

The establishment of additional banks and branches always contributes, in some measure, to the convenience of the banking public, and also, in many cases, to the vigor of banking competition. Ordinarily, therefore, establishment of additional banking facilities is beneficial from these viewpoints. In this case, however, banking offices affiliated with the largest financial institution in the area would be competing with small local banks, including a bank that opened for business only two months ago in the same shopping center in which it is proposed to locate one of the

offices of Whitney Jefferson. The effect of the entry of Whitney Jefferson at this time could be significantly detrimental to this new bank and to another small bank with which Whitney Jefferson would directly compete. In view of the specific responsibilities placed upon the Board of Governors by section 3 of the Bank Holding Company Act, it is questionable whether the Board may properly disregard this possibility of destructive competition on the ground that, if such a danger exists, another supervisory authority may refuse to authorize Whitney Jefferson to establish the office in question.

One other aspect of the Whitney Holding Corporation plan must be taken into account in view of section 3(c) of the Act, which requires the Board to consider the effect of proposed transactions on the public interest. To enable minority stockholder interests to have a voice in the direction of national banks, section 5144 of the United States Revised Statutes, as amended by the Banking Act of 1933 (12 U. S. Code 61), provides for cumulative voting in the election of directors of national banks—that is, each shareholder has “the right to vote the number of shares owned by him for as many persons as there are directors to be elected, or to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his shares shall equal, or to distribute them on the same principle among as many candidates as he shall think fit”.

In order to eliminate minority stockholders of Whitney National Bank of New Orleans and thereby to insure that Whitney Holding Corporation will be able to elect all members of the bank's board of directors, the plan before the Board includes a so-called “phantom bank” merger, which makes it impossible for a stockholder of the bank to retain his stock interest therein. The purpose of centralizing control of the holding company and its banks in the hands of very few individuals—perhaps only one individual—is apparent from other features of the proposal. Not only would the privilege of cumulative voting be denied to minority stockholders of Whitney Holding Corporation, but its Articles of Incorporation provide that its board may consist of as few as three directors. Furthermore, the Articles would permit a director, absent from a meeting, to authorize another director to “cast the vote of the absent director, according to written instructions, general

or special. . . . The statutes of Louisiana permit the use of such directors' proxies. Absent such statutory authorization, which is unusual if not absolutely unique, the courts uniformly have held that directors' responsibilities may not lawfully be discharged by giving proxies in lieu of attending directors' meetings. The basic duty of directors is to direct the policies of the corporation. To perform this duty, directors should attend meetings, participate in discussion, and vote in accordance with convictions arrived at after full and free interchange of ideas.

In brief, the plan before the Board seems designed to minimize the participation of stockholders, and even of directors, in the control and management of the holding company and its subsidiary banks. This appears to be the common objective of (1) eliminating minority interests in subsidiary banks (where they would enjoy the cumulative voting privilege), (2) the absence of cumulative voting in the bank holding company, (3) the provision for a board of directors that may consist of only three members, and (4) the almost unprecedented provision for use of proxies at directors' meetings. Taken together, these features of the proposal reflect an arrangement by which power to direct and control the holding company system, including its banks, could be concentrated in the hands of a single individual. In my judgment, such an undemocratic arrangement is particularly inappropriate in a system that is to consist of national banks, when it is considered that none of the three latter features is permissible under the National Bank Act and related Federal statutes. It should not receive this Board's stamp of approval.

The proposal before the Board would promote banking convenience in the East Bank section of metropolitan New Orleans to a moderate degree. It would also, however, provide a vehicle for enhancing the existing high degree of banking concentration in the area and would permit a centralization of banking power of major proportions in individual hands, to a degree that, to my knowledge, is without parallel in the American banking system. For these reasons, I conclude that the creation of the proposed holding company system would be contrary to the public interest and therefore should be denied.

May 3, 1962.

## DEFENDANT'S EXHIBIT 6

## WHITNEY NATIONAL BANK OF NEW ORLEANS

October 27, 1961

Keehn W. Berry  
President

## TO WHITNEY NATIONAL BANK SHAREHOLDERS:

## REORGANIZATION PROGRAM

Under date of July 17, 1961, I explained to you that we had been working for some time to obtain the necessary approval of the Comptroller of the Currency and the Federal Reserve Board to the steps required to create a Holding Company into which the stock of the Whitney National Bank would be converted and that we then contemplated moving funds from the Whitney National Bank of New Orleans into the Holding Company for the establishment of a Whitney National Bank in Jefferson Parish.

We now have the concurrence of the Comptroller of the Currency to the establishment of a Crescent City National Bank with a capital of \$280,000 and a surplus of \$56,000 and paid in undivided profits of \$14,000, or a total capitalization of the Crescent City National Bank of \$350,000. The steps needed to consummate the change in our capital structure will be as follows:

1. We propose to put \$350,000 of the capital funds of the Whitney National Bank in a Louisiana business corporation under the title—"WHITNEY HOLDING CORPORATION". The Whitney Holding Corporation will have an authorized capital of 1,120,000 shares of no par value stock. 5,600 of these shares will be issued to the Whitney National Bank of New Orleans for the \$350,000. The Bank will immediately distribute these shares to all of its shareholders on the basis of 1/20th of one share for each share of the 112,000 shares of the Whitney National Bank stock outstanding.
2. The Whitney Holding Corporation will cause the organization of the Crescent City National Bank contributing \$280,000 to capital, \$56,000 to surplus, and \$14,000 to undivided profits, and Whitney Holding Cor-

poration will receive for that all of the authorized stock of Crescent City National Bank, being 112,000 shares of \$2.50 par value.

3. Crescent City National Bank will enter into a consolidation agreement with the Whitney National Bank of New Orleans. Whitney Holding Corporation will execute an agreement which will be a part of the consolidation agreement. The consolidation agreement will provide for consolidation under national banking law as follows:

- a. All of the stock of the Crescent City National Bank will be retained by Whitney Holding Corporation except qualifying shares which will be sold to directors for cash.
- b. Whitney National Bank shareholders will surrender all shares which will be cancelled and they will receive 9-19 20 shares of Whitney Holding Corporation for each share held. These shares, together with the dividend described in Section 1 above, will give each present Whitney shareholder ten shares of Whitney Holding Corporation stock for each share of Whitney Bank stock now held.
- c. All assets and liabilities of Whitney National Bank of New Orleans will be consolidated into the Crescent City National Bank under the Charter of the Crescent City National Bank and under the name of the Whitney National Bank of New Orleans. The par value of the stock of Crescent City National Bank will be simultaneously increased to \$25.00 per share so that the capital structure of the new bank will be the same as that of the old.
- d. Dissenting shareholders of the Whitney National Bank of New Orleans will be entitled to a cash payment of the appraised value of the shares as provided by Federal Bank Law. In accordance with the same law, shares of Whitney Holding Corporation representing dissenting shareholders will be sold at public auction and the proceeds returned to the capital funds of Crescent City National Bank to the extent of funds used to pay the dissenting shareholders.



4. Upon appropriate notice and publication, the consolidation agreement will be submitted for approval by the shareholders of Whitney National Bank of New Orleans and shall become effective only upon the affirmative vote of not less than 2/3rds of the outstanding stock.
5. Upon completion of the consolidation Whitney Holding Corporation will own all of the stock, except directors qualifying shares, of the Crescent City National Bank (to be named Whitney National Bank of New Orleans). The outstanding shares of Whitney Holding Corporation will be 1,120,000 shares owned by all of the present Whitney Bank stockholders proportionately, except for dissenting shareholders.
6. The Crescent City National Bank (to be named Whitney National Bank of New Orleans) will provide \$650,000.00 to Whitney Holding Corporation with which Whitney Holding Corporation will cause to be created the Whitney National Bank in Jefferson Parish, receiving all stock therefor, being 20,000 shares having a \$25.00 par value. The initial capital structure will be \$500,000 capital, \$100,000 surplus, and \$50,000 undivided profits. Whitney Holding Corporation will immediately sell to directors qualifying shares for cash.
7. The Whitney Holding Corporation will register under and operate in accordance with the Bank Holding Company Act of 1956 and other applicable laws, under which it can acquire no additional banks without approval of the Board of Governors of the Federal Reserve. There are no present plans for additional acquisitions.

Insofar as the operation in New Orleans is concerned, this program is simply a corporate reorganization of the present Whitney National Bank of New Orleans. It contemplates no changes in personnel, management, or directorship. It contemplates no changes in the facilities of the bank in New Orleans. It contemplates no changes in the ownership or proportional shareholdings.

The basic purpose of the program is to allow the Whitney organization in New Orleans to commence a Holding Company operation controlling a bank in East Jefferson Parish to protect Whitney's competitive position in that area into which many of Whitney's present customers have moved.

This detailed outline of the main features of the consolida-



tion program is sent to you in accordance with the prescribed procedure in the regulations of the Comptroller of the Currency.

Sincerely,

K. W. BERRY

Filed June 21, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

BANK OF NEW ORLEANS & TRUST COMPANY, ET AL.,

*versus*

COMPTROLLER OF THE CURRENCY

**AFFIDAVIT IN SUPPORT OF DEFENDANT**

STATE OF LOUISIANA,  
Parish of Orleans.

Before Me, the undersigned authority, personally came and appeared: JAMES J. GILL, who, being duly sworn, deposes and says:

(1) I am a resident of the City of New Orleans and President of the Whitney National Bank in Jefferson Parish. This affidavit is made to support any pleadings in opposition to the application of the plaintiff in this proceeding and particularly in opposition to a request for a preliminary injunction.

(2) Whitney National Bank in Jefferson Parish in good faith has completed all legal requirements of incorporation, is legally in existence, and has gone to substantial expense in preparing to open for business. Its directors and officers are qualified; its clerks and tellers have been designated and appointed; premises have been purchased for the location of the permanent bank and arrangements are being made for the improvement of the premises; temporary premises in the same location have been leased; forms, checks, books and stationery have been printed, as evidenced by exhibits attached hereto (marked Exhibit "A"); the public has been notified that it will open for business momentarily.

(3) The executive vice president, the remaining executive

officers except the President, and the entire staff of the Whitney National Bank in Jefferson Parish will be separate, apart, and distinct from the Whitney National Bank of New Orleans, and the Board of Directors of said bank is different and will operate as a separate, independent organization.

(4) Guaranty Bank & Trust Company of Lafayette serves a community separated from Jefferson Parish by the parishes (counties) of St. Charles, Lafourche, Assumption, and St. Mary, and in no way can be considered as serving the area that is served by Jefferson Parish.

(5) Testimony taken subject to cross-examination in the litigation of *Louis J. Roussel v. Whitney National Bank of New Orleans*, No. 394-584 of the Civil District Court for the Parish of Orleans, in which judgment was rendered on October 26, 1961, declaring Louis J. Roussel to be a competitor of the Whitney National Bank of New Orleans through his interest in the National American Bank in New Orleans, together with testimony by Louis J. Roussel before the Board of Governors of the Federal Reserve System in the matter of the application of Whitney Holding Corporation on January 17, 1962, affirmatively establish that Louis J. Roussel has a practical working control of the Merchants Trust and Savings Bank of Kenner, plaintiff herein, through the ownership of 40 per cent. of the outstanding capital stock of that bank and a practical working control of the National American Bank of New Orleans through the control of approximately 37 per cent. of the outstanding capital stock. (See statement of condition of Merchants Trust and Savings Bank of Kenner attached hereto and marked Exhibit "B".)

(6) National Bank of Commerce in New Orleans operates an affiliate in Jefferson Parish under substantially identical name of National Bank of Commerce in Jefferson Parish. (See statement of condition attached hereto and marked Exhibit "C".) The National Bank of Commerce is represented in extremely important proceedings by Messrs. A. J. Waechter and George Denegre, partners in the firm of Jones, Walker, Waechter, Poitevent, Carrere & Denegre. (See Motion to Dismiss in the case of *Orleans Parish School Board, et al. vs. Whitney National Bank of New Orleans, et al.* U.S.D.C. E.D.La., C.A. No 10,623, copy of which is attached hereto and marked Exhibit "D".) Messrs. George Denegre and A. J. Waechter are both direc-

tors of the Bank of New Orleans. (See statement of condition attached hereto and marked Exhibit "E." See also Martindale-Hubbell card, Exhibit "F".)

(7) The preliminary injunction requested herein restraining the Comptroller of the Currency from delivering a certificate to the Whitney National Bank in Jefferson Parish authorizing it to commence business will cause irreparable injury to said bank.

JAMES J. GILLY

Sworn to and subscribed before me, this 16 day of June, 1962.

BARTHOLOMEW P. SULLIVAN, JR.  
*Notary Public.*

Lease of Commercial Property (Gross)

Parties 1 Willis J. Perrin (hereinafter called Lessor)

2 hereby leases to Leo Pollack & Co. Agents

Premises 3 (the obligations of all Lessees being in solido) (hereinafter called Lessee), the following described premises:

4 the frame and masonry building known as No. 4407 Jefferson Highway between

5 Central Avenue and Roman Street, Jefferson, La.

6

7

8

9

10

11

Term 12

13 This lease is for the term of twelve (12) months commencing

14 on the 15th day of June Nineteen Hundred and sixty-two

15 and ending on the 14th day of June Nineteen Hundred and sixty-three

Rent 16 This lease is made for and in consideration of a monthly cash rental of

17 One Hundred Thirty-five and 00/100 (\$135.00) dollars

18 payable monthly in advance

Place of Payment 19 The first payment shall be due on June 15th, 1962

20 Willis J. Perrin at 4411 Jefferson Highway The succeeding payments shall be due on the

21 first day of each and every succeeding month

22 Lessor may from time to time designate other places for the payment of the rent by written notice to

23 Lessee.

Use of Premises 24 The premises herein leased are to be used only for the following purposes:—

25 for commercial purposes

26 Lessee is obligated not to use the premises for any purpose that is unlawful or that tends to injure

27 or depreciate the property.

Condition and Maintenance 28 The within leased premises and appurtenances, including the locks, keys, plumbing, and glass,

29 elevator, and heating system, if any, and all other fixtures, are accepted by the Lessee in their present

30 condition, except for repairs and improvements as are written into this lease. The Lessee agrees

31 to keep them in the same order as received during the term of this lease and no repairs shall be due Lessee

32 except such as may be especially noted herein or needed to the roof or rendered necessary by fire or other

33 casualty to pay all bills for water, including water sprinkler service charge, light, gas and other service, and

34 to comply at the Lessee's expense with all ordinances and laws, now existing or to be enacted, and at the ter-

35 the premises broom clean and free from trash, and in like good

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned authority, personally came and appeared \_\_\_\_\_ resident of \_\_\_\_\_ who declared and acknowledged to me that he executed the foregoing instrument and signed the same for the purpose and objects therein expressed, acting in the capacity of \_\_\_\_\_, and by order of the Board of Directors, of \_\_\_\_\_.

IN TESTIMONY WHEREOF, I have set my hand and seal in the City of \_\_\_\_\_ State of \_\_\_\_\_ My commission expires \_\_\_\_\_

Notary Public.

Assignment

For value received I/we hereby assign all my/our rights, title and interest in and to the within lease unto \_\_\_\_\_ his heirs, successors or assigns, with full subrogation.

Witnesses:

Lessor

Rent

Place of  
Payment

Use of  
Premises

Condition  
and  
Maintenance

Delayed  
Possession

Improvements

14. on the 25th day of June Nineteen Hundred and sixty-three  
15. and ending on the 11th day of June Nineteen Hundred and sixty-three  
16. This lease is made for and in consideration of a monthly cash rental of  
17. One Hundred Thirty-five and 00/100 (\$135.00) dollars  
18. payable monthly in advance  
19. The first payment shall be due on June 15th, 1962  
20. Willis J. Perrin at 4421 Jefferson Highway The succeeding payments shall be due on the  
21. first day of each and every succeeding month at Jefferson Hwy  
22. Lessor may from time to time designate other places for the payment of the rent by written notice to  
23. Lessee.  
24. The premises herein leased are to be used only for the following purposes:—  
25. for commercial purposes  
26. Lessee is obligated not to use the premises for any purpose that is unlawful or that tends to injure  
27. or depreciate the property.  
28. The within leased premises and appurtenances, including the locks, keys, plumbing, and glass,  
29. elevator, and heating system, if any, and all other fixtures, are accepted by the Lessee in their present  
30. condition, except for such repairs and improvements as are written into this lease. The Lessee agrees  
31. to keep them in the same order as received during the term of this lease and no repairs shall be due Lessee  
32. except such as may be especially noted herein or needed to the roof or rendered necessary by fire or other  
33. casualty to pay all bills for water, including water sprinkler service charge, light, gas and other service, and  
34. to comply at the Lessee's expense with all ordinances and laws, now existing or to be enacted, and at the ter-  
35. mination or cancellation of this lease to return the premises broom clean and free from trash, and in like good  
36. order as received by actual delivery of the keys to Lessor or Agent, the usual decay, wear and tear excepted.  
37. If there are any elevators, lifts, machinery, glass or plate glass on premises, the care, maintenance  
38. and repairs of same are assumed by Lessee, together with all liability or claims for damages, and  
39. Lessee shall maintain liability insurance to the extent of \_\_\_\_\_ and  
40. plate glass insurance as an additional safeguard.  
41. If there are any switchtracks serving the leased property, the care, maintenance, repairs and fran-  
42. chise charges, if any, are to be assumed by \_\_\_\_\_  
43. Lessee assumes the maintenance of the plumbing, including fixtures, outlets and drains, and the  
44. protection and repair of said plumbing, etc., even when injured by freeze.  
45. Should Lessee be unable to obtain possession on date of beginning of lease because of delays of  
46. tenants, or if a building is to be constructed and workmen or contractors have not brought building  
47. to condition permitting occupancy, or should there be any other delay in granting possession, not  
48. caused by the personal fault and design of Lessor, this lease shall not be affected thereby, and Lessee  
49. shall not be entitled to any damages beyond the remission of rent for such term during which he is  
50. deprived of possession.  
51. Should Lessor agree to make improvements to premises, Lessee agrees, if Lessor deems it impos-  
52. sible or impracticable to make improvements agreed upon before possession is given, that Lessor may  
53. begin the work on the improvements after Lessee is duly installed in the property, and there shall be  
54. no reduction or waiver of any part of the rent because of this work.  
55. Lessee is obligated not to make any additions or alterations whatever to the premises without  
56. written permission. All additions, alterations or improvements made by Lessee with or without  
57. consent of Lessor, no matter how attached (except movable trade fixtures), must remain the property  
58. of Lessor, unless otherwise stipulated herein, Lessee, however, expressly waiving all right to compensa-  
59. tion therefor. The Lessor, at his option, may require the building to be replaced in its original condi-  
60. tion.  
61. Lessor or Agent or workmen shall have the right to enter the premises at any time for the purpose  
62. of making repairs necessary for the preservation of the property.



Responsibility for Damages

63 Lessee assumes responsibility for the condition of the premises and Lessor will not be responsible  
64 for damage caused by leaks in the roof, by bursting of pipes by freezing or otherwise, or by any vices  
65 or defects of the leased property, or the consequences thereof, except in the case of positive neglect  
66 or failure to take action toward the remedying of such defects within reasonable time after having  
67 received, written notice from Lessee of such defects and the damage caused thereby. Should Lessee  
68 fail to promptly so notify Lessor, in writing of any such defects, Lessee will become responsible for  
69 any damage resulting to Lessor or other parties.

Signs or Decorations

70 Lessee is obligated not to display in, on, or above the leased premises any sign or decoration,  
71 the nature of which, in the judgment of Lessor is dangerous, unsightly or detrimental to the property.  
72 Lessee is prohibited from painting any signs on the leased property without the written consent of  
73 Lessor, and Lessee is obligated to promptly remove at or before the expiration of this lease, any and  
74 all signs painted or placed in or upon any part of the leased premises, to Lessor's satisfaction and Lessee is  
75 obligated to pay the cost of said removal, plus agent's or attorney's fees, in event of failure to carry out  
76 this obligation.

77 Lessor also reserves the right to keep posted on the premises signs "For Sale" or "By Auction"  
78 at any time during the term of this lease and also cards "For Rent" during the 120 days preceeding  
79 the expiration of this lease; and Lessee must allow parties authorized by Lessor or Agent to visit the  
80 premises in view of buying during the term of this lease and in view of renting for 120 days prior to  
81 expiration, from 10 A. M. to 5 P. M.

Vacating Premises

82 In the event of the Lessee being absent from the premises, Lessor or his Agent shall be notified  
83 in writing where keys may be had in order that the premises may be shown to prospective tenants or  
84 purchasers. In case of the failure of the Lessee to comply with the foregoing conditions, or should  
85 Lessee not permit the posting of signs or allow prospective tenants or purchasers to inspect the property,  
86 as provided herein, Lessor has the option to consider this lease renewed for one year under the same  
87 terms and conditions, or may hold Lessee responsible for damages, and Lessor or Agent has the further  
88 option to enter the premises by any means, without responsibility to Lessee for any loss or damage re-  
89 sulting therefrom.

90 Should the premises be vacated or abandoned by Lessee because of ejectment for breach hereof,  
91 or otherwise, or should the Lessee begin to remove personal property or goods to the prejudice of the  
92 Lessor's lien, then the rent for the unexpired term, with Attorney's fees, shall at once become due and  
93 exigible, and Lessor, at his option, has the right to cancel the lease, or re-enter and let said premises  
94 for such price and on such terms as may be immediately obtainable and apply the net amount realized  
95 to the payment of the rent.

Surrender Of Premises

96 At the expiration of this lease, or its termination for other causes, Lessee is obligated to immedi-  
97 ately surrender possession, and should Lessee fail to do so, he consents to pay any and all damages,  
98 but in no case less than five times the rent per day, with attorney's fees, costs, etc. Lessee also expressly  
99 waives any notice to vacate at the expiration or termination of this lease and all legal delays, and hereby  
100 confesses judgment with costs placing Lessor in possession to be executed at once. Should Lessor allow  
101 or permit Lessee to remain in the leased premises after the expiration or termination of this lease, this  
102 shall not be construed as a reconduction of this lease.

Insurance

103 Lessee is obligated to put nothing in the leased premises nor to do anything which would forfeit the in-  
104 surance, and should any installation made or action taken by Lessee, whether authorized or unauthorized  
105 under this lease, increase the rate of insurance on the building or contents as fixed by the Louisiana Fire  
106 Prevention Bureau, or any similar institution, then Lessee is obligated to pay such increased rate of in-  
107 surance on building and all contents. Should the Lessee's occupancy or business render the Lessor unable  
108 to secure proper insurance, then Lessee hereby grants to Lessor the option of cancelling this lease, Lessee  
109 waiving all delays, and agreeing to surrender possession at once, if notified by Lessor to do so. Lessee is  
110 obligated to notify Lessor or Lessor's Agent, in writing, any time the leased premises will be unoccupied, so  
111 that necessary vacancy permits may be obtained from Lessor's insurers, and failure to comply with this con-  
112 dition will make Lessee liable for any loss or damage sustained by Lessor.

Sub-Lease

113 Lessee is not permitted to rent or sub-let or grant use or possession of the premises to any other  
114 party without the written consent of the Lessor, and then only in accordance with the terms of this  
115 lease. Should Lessee desire to sub-let, permission must be obtained in writing through Lessor or Agent  
116 and such sub-lease shall be handled by Lessor's Agent at expense of the herein Lessee.

117 No auction sales, or any sales of furniture, fixtures, etc., shall be conducted on the premises without

(80)

555 feet from corner of Jefferson Highway & Central Ave., and measures  
120.56 feet front on Jefferson Highway thence 153.27 feet South, thence  
60 feet West thence 19.22 ft. South, thence 202 ft. to a pipe, thence  
on an angle 21 ft., to Central Ave., thence North on Central Ave. 127  
feet thence westerly 54.42 ft. thence North a distance of 36.30 feet to (136.30)  
point of beginning, together with all buildings and improvements there-  
on as per plan of C. F. Rustis Inc. dated Jan. 6th. 1961, attached here-  
to and made part thereof, for the sum of EIGHTY FIVE THOUSAND AND NO/100  
\$85,000.00) on terms of all cash.

11. by a mortgage loan or loans of a rate of interest not to exceed XX % per annum, interest and principal payable on or before

12.                      years in equal (monthly)                      (quarterly)                      (semi-annual)                      (annual) installments.

13. Should purchaser, seller or agent be unable to obtain the loan stipulated above within XX days from acceptance hereof,

14. this contract shall then become null and void and the agent is hereby authorized to return the purchaser's deposit in full. Commitment

15. by lender to make loan subject to approval of title shall constitute obtaining of loan.

16. Property sold subject to the following lease or leases:

It is also agreed and understood that this property is zoned C-2 Commercial

17. Vendor to give possession of residence #424 Central Ave., on or before August, 1st. 1962.

18. All sewerage and street surfacing charges bearing against the property as of this date to be paid by Vendor

21. Real Estate Taxes and rentals (if any) to be prorated to date of act of sale.

22. All proper and necessary certificates and revenue stamps to be paid by seller. Cost of survey by Purchaser

23. Act of sale at expense of purchaser to be passed before Purchaser's Notary, on or prior to

24. July 1st. 1962

25. herewith agree to and do extend the time for passing of act of sale by thirty days.

26. Upon acceptance of this offer, vendor and purchaser shall be bound by all its terms and conditions and purchaser becomes obligated

27. to deposit with seller's agent immediately 10 % of the purchase price amounting to \$ 8,500

28. This deposit is to be non-interest bearing and may be placed in any bank in Metropolitan New Orleans, without responsibility

29. on the part of the agent in case of failure or suspension of such bank.

30. The seller shall deliver to purchaser a merchantable title, and his inability to deliver within the time stipulated herein

31. shall render this contract null and void, reserving unto purchaser the right to demand the return of the deposit from the holder thereof,

32. and reserving unto agent the right to recover commission

33. In the event the seller fails to comply with this agreement within the time specified or for any other reason, the purchaser shall

34. have the right either to demand the return of his deposit in full plus an equal amount to be paid as penalty by the seller; or the pur-

35. chaser may demand specific performance, at the option of the purchaser.

36. In the event the purchaser fails to comply with this agreement within the time specified, the seller shall have the right to

37. declare the deposit, ipso facto, forfeited, without formality beyond tender of title to purchaser; or the seller may demand specific per-

38. formance.

39. In the event the deposit is forfeited, the commission shall be paid out of this deposit, reserving to the seller the right to pro-

40. ceed against the purchaser for the recovery of the amount of the commission. Six (6) per cent

41. If this offer is accepted, seller agrees to pay the agent's commission of                      which

42. commission is earned by agent when this agreement is signed by both parties and when the mortgage loan, if any, has been secured.

43. Either party hereto who fails, for any reason whatsoever, to comply with the terms of this offer, if accepted, is obligated and

44. agrees to pay the agent's commission and all fees and costs incurred in enforcing collection of damages.

45. Commission to be divided equally between L. Morrison & James F. Turnbull.

46. This offer remains binding and irrevocable through May 23rd. 1962 noon.

47. Submitted to L. Morrison (Owner) (Signed) James F. Turnbull

48. By James F. Turnbull Selling Agent

Jefferson Parish, La. La.

MAY 22 1962

I/We accept the above in all its terms and conditions.

(Signed) Mrs Catherine G. Wilson  
Catherine G. Wilson  
Address  
attached letter to Mr. Morrison  
by reference as of copy in letter  
to Mr. Turnbull dated May 22, 1962

90 Should the premises be vacated or abandoned by Lessee because of ejectment for breach hereof,  
91 or otherwise, or should the Lessee begin to remove personal property or goods to the prejudice of the  
92 Lessor's lien, then the rent for the unexpired term, with Attorney's fees, shall at once become due and  
93 exigible, and Lessor, at his option, has the right to cancel the lease, or re-enter and let said premises  
94 for such price and on such terms as may be immediately obtainable and apply the net amount realized  
95 to the payment of the rent.

**Surrender  
Of Premises**

96 At the expiration of this lease, or its termination for other causes, Lessee is obligated to immedi-  
97 ately surrender possession, and should Lessee fail to do so, he consents to pay any and all damages,  
98 but in no case less than five times the rent per day, with attorney's fees, costs, etc. Lessee also expressly  
99 waives any notice to vacate at the expiration or termination of this lease and all legal delays, and hereby  
100 confesses judgment with costs placing Lessor in possession to be executed at once. Should Lessor allow  
101 or permit Lessee to remain in the leased premises after the expiration or termination of this lease, this  
102 shall not be construed as a reconduction of this lease.

**Insurance**

103 Lessee is obligated to put nothing in the leased premises nor to do anything which would forfeit the in-  
104 surance, and should any installation made or action taken by Lessee, whether authorized or unauthorized  
105 under this lease, increase the rate of insurance on the building or contents as fixed by the Louisiana Fire  
106 Prevention Bureau, or any similar institution, then Lessee is obligated to pay such increased rate of in-  
107 surance on building and all contents. Should the Lessee's occupancy or business render the Lessor unable  
108 to secure proper insurance, then Lessee hereby grants to Lessor the option of cancelling this lease, Lessee  
109 waiving all delays, and agreeing to surrender possession at once, if notified by Lessor to do so. Lessee is  
110 obligated to notify Lessor or Lessor's Agent, in writing, any time the leased premises will be unoccupied, so  
111 that necessary vacancy permits may be obtained from Lessor's insurers, and failure to comply with this con-  
112 dition will make Lessee liable for any loss or damage sustained by Lessor.

**Sub-Lease**

113 Lessee is not permitted to rent or sub-let or grant use or possession of the premises to any other  
114 party without the written consent of the Lessor, and then only in accordance with the terms of this  
115 lease. Should Lessee desire to sub-let, permission must be obtained in writing through Lessor or Agent  
116 and such sub-lease shall be handled by Lessor's Agent at expense of the herein Lessee.

117 No auction sales, or any sales of furniture, fixtures, etc., shall be conducted on the premises without  
118 the written consent of the Lessor or Agent.

**Non-Payment  
Of Rent  
Etc.**

119 Should the Lessee at any time violate any of the conditions of this lease, or discontinue the use of  
120 premises for the purpose for which they are rented, or fail to pay the rent, water bill, or other expenses  
121 assumed under this lease, punctually at maturity, as stipulated; or upon the adjudication of Lessee in  
122 bankruptcy, the appointment of a receiver for Lessee, or the filing of a bankruptcy, receivership or  
123 respite petition by the Lessee; or upon Lessee's suspension, failure or insolvency; and should such viola-

124 tion continue for a period of 10 days after written notice has been given Lessee, then,  
125 at the option of the Lessor, the rent for the whole unexpired term of this lease shall at once become  
126 due and exigible; and Lessor shall have the further option to at once demand the entire rent for the  
127 whole term, or to immediately cancel this lease, or to proceed for past due installments only, reserving  
128 its right to later proceed for the remaining installments, all without putting Lessee in default, Lessee  
129 to remain responsible for all damages or losses suffered by Lessor, Lessee hereby assenting thereto and  
130 expressly waiving the legal notices to vacate the premises. Should an Agent or Attorney be employed  
131 to give special attention to the enforcement or protection of any claim of Lessor arising from this lease,  
132 Lessee shall pay, as fees and compensation to such Agent or Attorney an additional sum of ten per  
133 cent of the amount of such claim, the minimum fee, however, to be \$25.00, or if the claim be not  
134 for money, then such sum as will constitute a reasonable fee, together with all costs, charges and  
135 expenses.

136 Should Lessee at any time use the leased premises or any portion thereof for any illegal or unlawful  
137 purpose, or commit, or permit or tolerate the commission therein of any act made punishable by fine or  
138 imprisonment under the laws of the United States or the State of Louisiana, or any ordinance of the City  
139 or Parish, the remedies set forth in the preceding paragraph shall be available to lessor immediately with-  
140 out necessity of giving any written notice or any other notice to lessee.

141 Failure to strictly and promptly enforce these conditions shall not operate as a waiver of Lessor's  
142 rights, Lessor expressly reserving the right to always enforce prompt payment of rent, or to cancel this  
143 lease, regardless of any indulgences or extensions previously granted. The receiving by Lessor, or Lessor's  
144 representative of any rent in arrears, or after notice or institution of any suit for possession, or for can-  
145 cellation of this lease, will not be considered as a waiver of such notice of suit, or of any of the rights  
146 of Lessor.



Fire Clause

147 If through no fault, neglect, or design of Lessee, the premises are destroyed by fire or other casu-  
148 alty or damaged to such an extent as to render them wholly unfit for occupancy, then this lease shall be  
149 cancelled. If, however, the premises can be repaired within 120 days from date of fire or casualty, then  
150 this lease shall not be cancelled, and Lessor shall notify Lessee within 30 days from date of fire or casu-  
151 alty that Lessor will repair the damage, and Lessee shall be entitled only to such a reduction or remission  
152 of rent as shall be just and proportionate.

153 Wherever there is conflict in this lease between the printed clauses and the specially written or  
154 typewritten clauses of this lease, the specially written or typewritten clauses shall apply.

155 All notices required to be given under the terms of this lease shall be in writing and by certified  
156 mail addressed to Lessee at the herein leased premises or to Lessor at the address appearing in this lease,  
157 and such mailing shall constitute full proof of and compliance with the requirement of notice, regard-  
158 less whether addressee receives such notice or not.

159 The parties to this lease understand and agree that the provisions herein shall, between them, have  
160 the effect of law, but in reference to matters not provided herein, this lease shall be governed by the or-  
161 dinances of the City of New Orleans, and the laws of the State of Louisiana.

162 Lessor, his heirs, successors, or assigns, agrees to pay Leo Pollman & Co.  
163 his heirs, successors or assigns a cash commission of 5% on the gross rental of this lease up to \$25,000.00  
164 and 4% on such amount above \$25,000.00 and a similar commission on any extension or renewal, if there be  
165 a privilege. Also a commission of 6% on the first \$100,000.00 4% on the excess on any agreement to sell or  
166 exchange made with or through Lessee.

167 In consideration of services rendered by Leo Pollman & Co.  
168 in negotiating this lease, Lessor hereby agrees that in the event the herein leased property is sold or  
169 transferred during the term of this lease, and there be any unpaid commissions still due

170 Leo Pollman & Co. for negotiating this lease, that Lessor will either pay same or have the pur-  
171 chaser assume same.

And now comes \_\_\_\_\_ WHO IS MADE A

121

This lease is made and signed in triplicate, in the City of New Orleans

State of Louisiana, this 12th day of June, 1961

LEO FELLMAN & CO. is hereby  
authorized to sign this lease  
as my agent.

Lessee

WHITNEY NATIONAL BANK *Dryden, Jefferson Parish*

**Lessor**

By: M. C. Mendenhall  
V.P. & Co. Secy

**Lessor's  
Affidavit**

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned authority, personally came and appeared \_\_\_\_\_ resident of \_\_\_\_\_, who declared and acknowledged to me that he executed the foregoing instrument and signed the same for the purpose and objects therein expressed, acting in the capacity of \_\_\_\_\_, and by order of the Board of Directors, of \_\_\_\_\_

IN TESTIMONY WHEREOF, I have set my hand and seal in the City of \_\_\_\_\_  
State of \_\_\_\_\_

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public.

**Lessee's  
Affidavit**

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned authority, personally came and appeared \_\_\_\_\_ resident of \_\_\_\_\_, who declared and acknowledged to me that he executed the foregoing instrument and signed the same for the purpose and objects therein expressed, acting in the capacity of \_\_\_\_\_, and by order of the Board of Directors, of \_\_\_\_\_

IN TESTIMONY WHEREOF, I have set my hand and seal in the City of \_\_\_\_\_  
State of \_\_\_\_\_

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public.

**Assignment**

For value received I/we hereby assign all my/our rights, title and interest in and to the within lease unto \_\_\_\_\_, his heirs, successors or assigns, with full subrogation.

Witnesses:

\_\_\_\_\_  
Lessor

# AGREEMENT TO PURCHASE OR SELL

For exclusive use of "Reditors"

JAMES F. TURNBULL Realtor  
1001 Jefferson Highway  
P.O. Box 23-193 Metairie, La.

Phone 729-3111  
Member Real Estate Board of New Orleans, Inc.

FORM ATP-OS NO. 2  
Revised and approved Feb. 1959

Standard Form  
Real Estate Board  
of New Orleans, Inc.

James F. Turnbull Agent New Orleans, La. May 22, 1962

1. We offer and agree to purchase that portion of land located in Jefferson Parish, La., in Suburban Acres Subdivision, beginning at a distance of 55 feet from corner of Jefferson Highway & Central Ave., and measures 120.86 feet front on Jefferson Highway thence 153.27 feet South, thence 60 feet West thence 19.22 ft. South, thence 202.34 to a pipe, thence on an angle 21 ft., to Central Ave., thence North on Central Ave., 127 feet thence westerly 54.42 ft. thence North a distance of 136.30 feet to (136.30) point of beginning, together with all buildings and improvements thereon as per plan of C. F. Rustis Inc. dated Jan. 6th. 1961, attached hereto and made part thereof, for the sum of EIGHTY FIVE THOUSAND AND NO/100 (\$85,000.00) on terms of all cash.

10. This sale is conditioned upon the ability of purchaser to borrow upon this property as security the sum of \$

11. by a mortgage loan or loans at a rate of interest not to exceed XX % per annum, interest and principal payable on or before

12. years in equal (monthly) (quarterly) (semi-annual) (annual) installments.

13. Should purchaser, seller or agent be unable to obtain the loan stipulated above within XX days from acceptance hereof,

14. this contract shall then become null and void and the agent is hereby authorized to return the purchaser's deposit in full. Commitment

15. by lender to make loan subject to approval of title shall constitute obtaining of loan.

16. Property sold subject to the following lease or leases:

17. It is also agreed and understood that this property is zoned C-2 Commercial

18. Vendor to give possession of residence #424 Central Ave., on or before August, 1st. 1962.

19. Occupancy

20. All sewerage and street surfacing charges bearing against the property as of this date to be paid by Vendor

21. Real Estate Taxes and rentals (if any) to be prorated to date of act of sale.

22. All proper and necessary certificates and revenue stamps to be paid by seller. Cost of survey by Purchaser

23. Act of sale at expense of purchaser to be passed before Purchaser's Notary, on or prior to

24. July 1st. 1962, provided that if bona fide curative work in connection with title is required, the parties

25. herewith agree to and do extend the time for passing of act of sale by thirty days.

26. Upon acceptance of this offer, vendor and purchaser shall be bound by all its terms and conditions and purchaser becomes obligated

27. to deposit with seller's agent immediately 10 % of the purchase price amounting to \$ 8,500

28. This deposit is to be non-interest bearing and may be placed in any bank in Metropolitan New Orleans, without responsibility

29. on the part of the agent in case of failure or suspension of such bank.

30. The seller shall deliver to purchaser a merchantable title, and his inability to deliver within the time stipulated herein

31. shall render this contract null and void, reserving unto purchaser the right to demand the return of the deposit from the holder thereof,

32. and reserving unto agent the right to recover commission

33. In the event the seller fails to comply with this agreement within the time specified or for any other reason, the purchaser shall

34. have the right either to demand the return of his deposit in full plus an equal amount to be paid as penalty by the seller, or the pur-

35. chaser may demand specific performance, at the option of the purchaser.

36. In the event the purchaser fails to comply with this agreement within the time specified, the seller shall have the right to

37. declare the deposit, ipso facto forfeited, without formality beyond tender of title to purchaser; or the seller may demand specific per-

38. formance.

39. In the event the deposit is forfeited, the commission shall be paid out of this deposit, reserving to the seller the right to pro-

40. ceed against the purchaser for the recovery of the amount of the commission. Six (6) per cent

41. If this offer is accepted, seller agrees to pay the agent's commission of

42. commission is earned by agent when this agreement is signed by both parties and when the mortgage loan, if any, has been secured.

43. Either party hereto who fails, for any reason whatsoever, to comply with the terms of this offer, if accepted, is obligated and

44. agrees to pay the agent's commission and all fees and costs incurred in enforcing collection and damages.

45. Commission to be divided equally between L. Morrison & James F. Turnbull.

46. This offer remains binding and irrevocable through May 23rd. 1962 noon.

June 5, 1962

Mr. Kennedy Gilly,  
c/o Milling, Saal, Saunders, Benson & Woodward  
Whitney Building  
New Orleans, Louisiana

Dear Mr. Gilly -

The bank has been negotiating for the purchase of a piece of property on Jefferson Highway and Central Avenue in Jefferson Parish in connection with the operation of the Whitney National Bank in Jefferson Parish.

We enclose herewith the following -

Copy of Summary No. 658-Ordinance No. 4325 adopted November 12, 1959 by Jefferson Parish Council, zoning lots B X D E F and G as C-2 Commercial.

Copy of Summary No. 1322-Ordinance No. 4050 adopted March 9, 1961, approving plan of subdivision of lots B X D E F and G Suburban Acres, by Jefferson Parish Council.

Original letter from Hermann & Hermann to Miss Catherine J. Nixon, dated August 19, 1957, re property 4403 Jefferson Hwy.

Copy of Act of Mortgage by Catherine J. Nixon, et al to First National Life Insurance Co., July 31, 1957.

Release of Mortgage before Frank S. Hermann, from Security Bldg. & Loan Assn., \$30,000.00 dated July 31, 1957,

and a plat of the property.

We would like for the title of the property to be examined and would appreciate your handling the transaction for us.

Cordially yours,

John C. Shan,  
Vice President

JCS:jes  
encls.

RECEIPT IS HEREBY ACKNOWLEDGED OF THE ABOVE WITHIN DESCRIBED

K/S DATE 6/5/62

121



IN JEFFERSON PARISH,  
JEFFERSON PARISH, LA.

We welcome you as a depositor of our bank and will constantly strive to make our relationship pleasant and mutually satisfactory. Our officers and staff will gladly assist you in your banking requirements and we invite you to make full use of our facilities.

**JAMES GILLY, JR., President**

[illegible]



**JAMES GILLY, JR., President**

[illegible]

19 No

**WHITNEY NATIONAL BANK** 84 517  
650  
IN JEFFERSON PARISH  
JEFFERSON PARISH LA

PAY TO  
THE ORDER OF

CENTS

DOLLARS

**WHITNEY NATIONAL BANK** 84-517  
650  
IN JEFFERSON PARISH  
JEFFERSON PARISH, LA.

**CUSTOMERS DEPARTMENT**

*Pay to the order of*

VALUE RECEIVED AND CHARGE TO ACCOUNT OF

WITH EXCHANGE

\$

*Tollman*

ORIGINAL

# WHITNEY NATIONAL BANK

IN JEFFERSON PARISH  
JEFFERSON PARISH LA

NUMBER

Pay to the order of

\$

Dollars

AUTHORIZED SIGNATURE

ORIGINAL

# WHITNEY NATIONAL BANK

IN JEFFERSON PARISH  
JEFFERSON PARISH LA

NUMBER

Pay to the order of

\$

Dollars

AUTHORIZED SIGNATURE

128

# WHITNEY NATIONAL BANK

IN JEFFERSON PARISH

JEFFERSON PARISH, LA.

JAMES GILLY, JR.  
PRESIDENT

10 19

TO

FOR

AMOUNT DEPOSITED

TOTAL

AMOUNT THIS CHECK

BALANCE FORWARD

BALANCE BROUGHT FORWARD

WHITNEY NATIO

IN JEFFERSON PAI  
JEFFERSON PARIS

PAY TO  
THE ORDER OF

10 19

TO

FOR

AMOUNT DEPOSITED

TOTAL

AMOUNT THIS CHECK

BALANCE FORWARD

WHITNEY NATIO

IN JEFFERSON PAI  
JEFFERSON PARIS

PAY TO  
THE ORDER OF

10 19

TO

FOR

AMOUNT DEPOSITED

TOTAL

AMOUNT THIS CHECK

BALANCE FORWARD

WHITNEY NATIO

IN JEFFERSON PAI  
JEFFERSON PARIS

PAY TO  
THE ORDER OF

129

19

NO

**WHITNEY NATIONAL BANK**

IN JEFFERSON PARISH  
JEFFERSON, PARISH, LA

84 517  
650

PAY TO  
THE ORDER OF

S

DOLLARS

19

NO

**WHITNEY NATIONAL BANK**

IN JEFFERSON PARISH  
JEFFERSON, PARISH, LA

84 517  
650

PAY TO  
THE ORDER OF

S

DOLLARS

19

NO

**WHITNEY NATIONAL BANK**

JEFFERSON PARISH  
JEFFERSON, PARISH, LA

84 517  
650

PAY TO  
THE ORDER OF

S

DOLLARS



MERCHANTS TRUST & SAVINGS BANK

## STATEMENT OF CONDITION

at the close of business

DECEMBER 31, 1961

## RESOURCES

[illegible]

## LIABILITIES

[illegible]

No. \_\_\_\_\_  
DATE \_\_\_\_\_ 19\_\_\_\_  
To \_\_\_\_\_  
FOR \_\_\_\_\_

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

No. \_\_\_\_\_  
DATE \_\_\_\_\_ 19\_\_\_\_  
To \_\_\_\_\_  
FOR \_\_\_\_\_

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

No. \_\_\_\_\_  
DATE \_\_\_\_\_ 19\_\_\_\_  
To \_\_\_\_\_  
FOR \_\_\_\_\_

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

\_\_\_\_\_ 19\_\_\_\_ No. \_\_\_\_\_  
**WHITNEY NATIONAL BANK** 84-517  
650  
IN JEFFERSON PARISH  
JEFFERSON PARISH, LA.

PAY TO THE ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ DOLLARS

\_\_\_\_\_ 19\_\_\_\_ No. \_\_\_\_\_  
**WHITNEY NATIONAL BANK** 84-517  
650  
IN JEFFERSON PARISH  
JEFFERSON PARISH, LA.

PAY TO THE ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ DOLLARS

\_\_\_\_\_ 19\_\_\_\_ No. \_\_\_\_\_  
**WHITNEY NATIONAL BANK** 84-517  
650  
IN JEFFERSON PARISH  
JEFFERSON PARISH, LA.

PAY TO THE ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ DOLLARS

TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

No. \_\_\_\_\_

DATE \_\_\_\_\_ 19 \_\_\_\_\_

To \_\_\_\_\_

FOR \_\_\_\_\_

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

No. \_\_\_\_\_

DATE \_\_\_\_\_ 19 \_\_\_\_\_

To \_\_\_\_\_

FOR \_\_\_\_\_

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

No. \_\_\_\_\_

DATE \_\_\_\_\_ 19 \_\_\_\_\_

To \_\_\_\_\_

FOR \_\_\_\_\_

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

\_\_\_\_\_ 19 \_\_\_\_\_ No. \_\_\_\_\_  
**WHITNEY NATIONAL BANK** 84-517  
 IN JEFFERSON PARISH 650  
 JEFFERSON PARISH, LA.

PAY TO THE ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ DOLLARS

\_\_\_\_\_ 19 \_\_\_\_\_ No. \_\_\_\_\_  
**WHITNEY NATIONAL BANK** 84-517  
 IN JEFFERSON PARISH 650  
 JEFFERSON PARISH, LA.

PAY TO THE ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ DOLLARS

\_\_\_\_\_ 19 \_\_\_\_\_ No. \_\_\_\_\_  
**WHITNEY NATIONAL BANK** 84-517  
 IN JEFFERSON PARISH 650  
 JEFFERSON PARISH, LA.

PAY TO THE ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ DOLLARS

No. \_\_\_\_\_

DATE \_\_\_\_\_ 19\_\_

To \_\_\_\_\_

FOR \_\_\_\_\_

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

No. \_\_\_\_\_

DATE \_\_\_\_\_ 19\_\_

To \_\_\_\_\_

FOR \_\_\_\_\_

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

No. \_\_\_\_\_

DATE \_\_\_\_\_ 19\_\_

To \_\_\_\_\_

FOR \_\_\_\_\_

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

19\_\_ No. \_\_\_\_\_  
**WHITNEY NATIONAL BANK** 84 517  
IN JEFFERSON PARISH  
JEFFERSON PARISH LA

PAY TO THE ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ DOLLARS

19\_\_ No. \_\_\_\_\_  
**WHITNEY NATIONAL BANK** 84 517  
IN JEFFERSON PARISH  
JEFFERSON PARISH LA

PAY TO THE ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ DOLLARS

19\_\_ No. \_\_\_\_\_  
**WHITNEY NATIONAL BANK** 84 517  
IN JEFFERSON PARISH  
JEFFERSON PARISH LA

PAY TO THE ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ DOLLARS

AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

No. \_\_\_\_\_

DATE \_\_\_\_\_ 19 \_\_\_\_\_

To \_\_\_\_\_

FOR \_\_\_\_\_

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

No. \_\_\_\_\_

DATE \_\_\_\_\_ 19 \_\_\_\_\_

To \_\_\_\_\_

FOR \_\_\_\_\_

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

No. \_\_\_\_\_

DATE \_\_\_\_\_ 19 \_\_\_\_\_

To \_\_\_\_\_

FOR \_\_\_\_\_

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

\_\_\_\_\_ 19 \_\_\_\_\_ No. \_\_\_\_\_  
**WHITNEY NATIONAL BANK** 84-517  
IN JEFFERSON PARISH 650  
 JEFFERSON PARISH LA

PAY TO  
THE ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ DOLLARS

\_\_\_\_\_ 19 \_\_\_\_\_ No. \_\_\_\_\_  
**WHITNEY NATIONAL BANK** 84-517  
IN JEFFERSON PARISH 650  
 JEFFERSON PARISH LA

PAY TO  
THE ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ DOLLARS

\_\_\_\_\_ 19 \_\_\_\_\_ No. \_\_\_\_\_  
**WHITNEY NATIONAL BANK** 84-517  
IN JEFFERSON PARISH 650  
 JEFFERSON PARISH LA

PAY TO  
THE ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ DOLLARS

EXHIBIT B

132

## STATEMENT OF CONDITION

as of

DECEMBER 31, 1961

### OFFICERS

EDWARD C. BOYER, President and Cashier

SAM A. WOOL, Executive Vice-President

WILLIAM E. MILLER, JR., Assistant Cashier

PAUL D. PAGE, Assistant Cashier

ARCHIE R. USHER, Assistant Cashier

★ ★

### DIRECTORS

EDWARD C. BOYER

FRANK C. DUPEPE

WM. R. MANCUSO

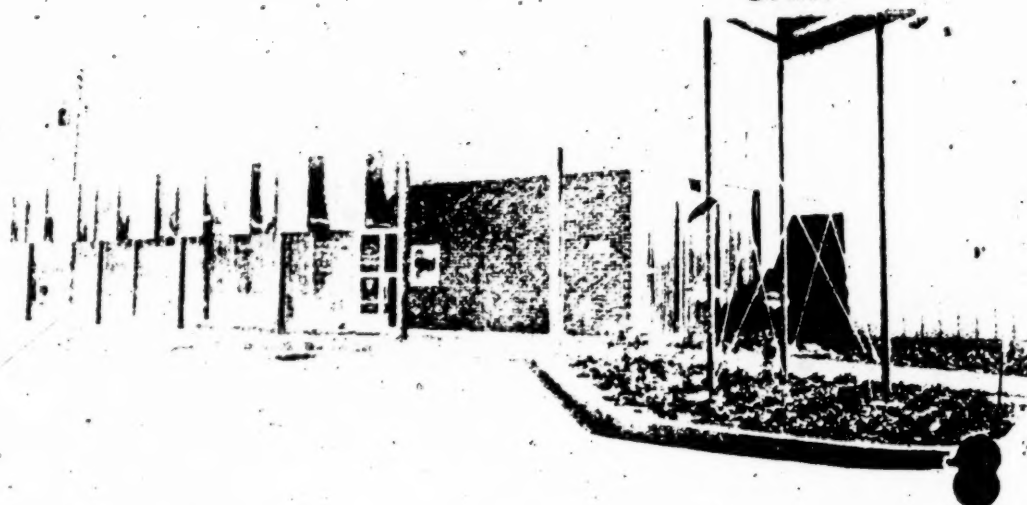
HENRY RAZIANO

LOUIS J. ROUSSEL

EDWARD J. STOULIG

SAM A. WOOL

MERCHANTS  
TRUST AND  
SAVINGS  
BANK



MERCHANTS TRUST & SAVINGS BANK

*"Your Neighborhood Bank"*

KENNER, LOUISIANA

• POST OFFICE BOX 458

Member, Federal Deposit  
Insurance Corporation

Member, Federal  
Reserve System



WILLIAM HARRY TALBOT  
 Attorney at Law and Notary Public  
 808 Whitney Building  
 New Orleans 12

MAgnolia 5145

July 12, 1961

Mr. Keelm W. Berry, President,  
 Whitney National Bank of New Orleans,  
 New Orleans, Louisiana.

Dear Mr. Berry:

On April 27, 1961 I sold to Louis J. Roussel for the account of the Succession of J. P. Morgan, Edward C. Morgan and Patricia Morgan, 5,661 shares of the capital stock of Merchants Trust and Savings Bank, Kenner, Louisiana, for \$261,475.38 cash. I received Cashier's checks on the National American Bank of New Orleans amounting to this sum, in full payment therefor.

According to the list of stockholders which I had, at that time there were 12,500 shares of stock outstanding.

Very truly yours,

WML H. TALBOT

wht/me

WALL STREET JOURNAL

June 14, 1961

Holder Starts Proxy Battle for Control of Whitney  
 National Bank in New Orleans

*By a WALL STREET JOURNAL Staff Reporter*

NEW ORLEANS—A stockholder, dissatisfied with the dividend policy of Whitney National Bank, has started a proxy fight for control of the bank, Louisiana's largest and one of the biggest in the South.

The dissident stockholder is Louis J. Roussel, who said he holds 3,000 to 5,000 shares of the bank's 112,000 shares outstanding. Mr. Roussel said he is a former street car conductor and oil field worker who now is an oil producer and real estate man. He claimed to be Whitney's third largest

stockholder. The only larger holders, Mr. Roussel said, are a Pittsburgh woman and the pension fund of the U. S. Steel Corp.

Last April Whitney National listed total assets of nearly \$476 million. New Orleans' next largest bank, the National Bank of Commerce, has assets of \$257 million.

In a letter mailed to the bank's shareholders, Mr. Roussel said his main complaint is dividends, currently paid at an annual rate of \$4 a share. "They started that rate in 1949, when earnings were \$14.25 a share; last year earnings were \$30.87, and they still paid \$4," Mr. Roussel said.

If his fight for control succeeds, Mr. Roussel said, he will call for a 10-for-1 stock split and a dividend increase to an annual rate of \$20. He said he would ask that Keeln W. Berry be replaced as president, but did not disclose who he would propose for the job.

Mr. Roussel also said he would demand an audit to determine what the "hidden assets" of the bank are and insist on following what he claimed is "the advice of the national bank examiners and sell all of the hidden assets the bank now owns." Proceeds of the sale, he said, would be divided among shareholders. Mr. Roussel said such hidden assets consist of land holdings, among other things.

"There are enough small stockholders to gain working control of the bank, with the help of cumulative voting, Mr. Roussel stated. Under cumulative voting, a stockholder can multiply his shares by the number of directors posts up for a vote, and concentrate or distribute these votes as he wishes. Mr. Roussel said he hopes to name at least six of the 17 members of the board at the annual meeting next January 9.

Bank officials have made little comment on Mr. Roussel's efforts, except to acknowledge they are aware of them. As to Mr. Roussel's chances, board member Morgan Whitney says, "Anybody's guess is as good as mine."

A broker who handles Whitney stock in over-the-counter trading says, "You can bet they're worried. Both sides are buying all the stock they can get. Three weeks ago you could buy Whitney for \$400 a share; now it's \$480 bid, and there's none offered."

Mr. Roussel said he decided to make a move for control of Whitney after a disagreement over interest rates on a \$1.5 million loan the bank made him. "They told me if I didn't like it I could borrow my money at another bank."

So, he said, he sent a check to pay off the loan on a Friday afternoon, but was told he'd have to keep paying interest until Monday, a matter of \$800. "I told them that wasn't even legal and I was starting a fight for control right then," he continued.

"I'm willing to invest up to \$10 million buying shares and soliciting proxies," Mr. Roussel said. Two years ago he waged a similar campaign against another New Orleans bank, the National American Bank, and was successful.

In that campaign, he said, directors decided to work with him after his proxy fight intentions were announced. He said he owned personally 15% of National American and represented about 40% of the stock. Mr. Roussel stated that his group won seven seats on the board, including one currently held by himself, and won the support of eight additional directors on the 25-man board.

Filed June 21, 1962

EXHIBIT C

139

### OFFICERS

VIC J. PASSERA *President*  
F. M. LEGUENEC, JR. *Vice President and Cashier*  
LOUIS H. CLAY *Vice President*  
HOWARD S. COX *Vice President*  
JOSEPH S. DELANEY *Vice President*  
VICTOR J. KURZWEG, JR. *Mgr. Metairie Office*  
SHELLEY SCHUSTER *Vice President*  
CLEBERT C. SMITH *Vice President*  
FRANK A. GRECO *Vice President*  
NUMA J. BARROIS *Mgr. Harahan Office*  
EDWARD SMIRA *Assistant Vice President*  
Assistant Cashier & Manager  
Veterans Highway Office  
DAVID J. VOGLER *Assistant Cashier*  
DANIEL B. RYAN *Assistant Cashier & Manager*  
Consumer Credit Dept.  
CLEVELAND GONZALES *Manager Discount Dept.*

### ADVISORY COMMITTEE

HAROLD BUCHLER *Attorney*  
SIDNEY W. CAMPBELL *President,*  
S. W. Campbell & Son, Inc.  
SAM CARO *President,*  
Southern Tailoring Co., Inc.  
JOSEPH LUCAS *President,*  
Medical Arts Pharmacy, Inc.  
THURSTON B. MARTIN *President,*  
First National Life Ins. Co.  
GEORGE J. PECORARO *Business Consultant*  
ROSS WILLS *Vice President,*  
C. W. Vollmer and Co., Inc.  
HAROLD E. WISE *President,*  
Harold's Cafeteria  
McDONALD, BUCHLER & CARR, Attorneys

### SERVICES

COMMERCIAL ACCOUNTS  
PERSONAL ACCOUNTS  
SAVINGS DEPARTMENT  
COMMERCIAL LOANS  
PERSONAL LOANS  
AUTOMOBILE LOANS  
REAL ESTATE MORTGAGE LOANS  
HOME IMPROVEMENT LOANS  
TRAVELERS CHEQUES  
GUARANTEED CHECKS  
SAFE DEPOSIT VAULTS  
CHRISTMAS CLUB

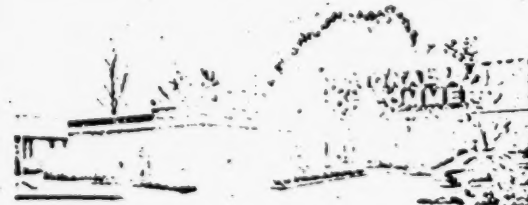
HEAD OFFICE—2400 Jefferson Highway  
METAIRIE OFFICE—2030 Metairie Road  
HARAHAN OFFICE—6318 Jefferson Hwy.  
Veterans Hwy. Office—5300 Veterans Hwy.



HEAD OFFICE  
Jefferson Highway at Labarre Road



METAIRIE OFFICE  
2030 Metairie Road



HARAHAN OFFICE  
Jefferson Highway at Oak Avenue

## THE NATIONAL BANK OF COMMERCE

IN JEFFERSON PARISH



STATEMENT OF CONDITION

DECEMBER 31, 1960

# THE NATIONAL BANK OF COMMERCE

IN JEFFERSON PARISH (LOUISIANA)

140

## DIRECTORS

WILLIAM E. CASSIDY  
*Asst. Div. Sales Manager  
Texaco, Inc.*

LOUIS H. CLAY  
*Board Chairman,  
Southern Ford Tractor Corporation*

HOWARD S. COX  
*Vice President*

GEORGE S. FARNSWORTH  
*President,  
R. P. Farnsworth & Co., Inc.*

S. J. GONZALES, JR.  
*President,  
Southern School Equipment Co., Inc.*

WILLIAM T. HESS  
*Vice-President & Chief Engineer,  
Louisiana Power & Light Co.*

DR. VIRGIL T. JACKSON, JR.  
*Dentist*

ARTHUR L. JUNG, JR.  
*Secretary,  
Crescent Bed Co., Inc.*

VICTOR J. KURZWEG, JR.  
*President,  
Consolidated Companies, Inc.*

F. M. LEGUENEC, JR.  
*Vice President and Cashier*

C. C. McKIRAHAN  
*Retired*

JOHN A. MILLER  
*President,  
Brown-Miller Company*

R. A. MITCHELL  
*President,  
Louisiana Transit Co., Inc.*

ROBERT M. MONSTED  
*President,  
Jefferson Cold Storage, Inc.*

DR. ALTON OCHSNER  
*Physician and Surgeon*

JOHN OULLIBER  
*President,  
The National Bank of Commerce  
in New Orleans*

HENRY F. OWSLEY, JR.  
*Partner,  
Owsley Insurance Agency*

VIC J. PASSERA  
*President*

SHELLEY SCHUSTER  
*Executive Representative,  
Robert Gair Paper Products Group,  
Continental Can Co., Inc.*

CLEBERT C. SMITH  
*Executive Vice President  
Correspondent Banking-Credits  
The National Bank of Commerce  
in New Orleans*

## STATEMENT OF CONDITION

DECEMBER 31, 1960

### RESOURCES

Cash on Hand and Due from Banks	\$ 2,974,685.30
U. S. Government Securities	8,546,178.98
Obligations of U. S. Government Instrumentalities	735,542.70
Stock in Federal Reserve Bank	30,000.00
Municipal Securities	1,565,704.20
Loans and Discounts	5,342,035.63
Bank Buildings and Leasehold Improvements	437,263.98
Furniture and Fixtures	165,140.35
Accrued Interest and Other Assets	115,283.08
<b>TOTAL RESOURCES</b>	<b>\$19,911,834.22</b>

### LIABILITIES

Deposits	\$18,124,411.21
Discount Collected but not Earned	69,486.40
Reserve for Taxes, Interest and Expenses	421,578.62
<b>TOTAL LIABILITIES</b>	<b>18,615,476.23</b>
Capital Stock	600,000.00
(60,000 Shares, \$10.00 Par)	
Surplus	400,000.00
Undivided Profits	296,357.99
<b>Total Capital Funds</b>	<b>\$ 1,296,357.99</b>
<b>TOTAL</b>	<b>\$19,911,834.22</b>

Member Federal Deposit Insurance Corporation

This Bank is a Legal Affiliate of  
The National Bank of Commerce in New Orleans

## EXHIBIT D

Filed June 21, 1962

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF  
LOUISIANA, NEW ORLEANS DIVISION

Civil Action No. 10,623

ORLEANS PARISH SCHOOL BOARD, ET ALS

vs.

WHITNEY NATIONAL BANK, ET ALS

## MOTION TO DISMISS

The National Bank of Commerce in New Orleans, through undersigned counsel, moves the Court to dismiss the complaint herein on the following grounds:

## I

That the Court is without jurisdiction for the reason that both the plaintiff and mover are citizens of the same State and the complaint discloses no other grounds upon which the jurisdiction of this Court may be invoked.

## II

Alternatively, mover avers that it is, and always has been, desirous of disbursing the funds on deposit with it and which are the subject of this proceeding, on the order of the persons rightfully entitled thereto. However, as will appear from the complaint herein, the ownership of said funds is in dispute, others not parties to this suit claiming title thereto, so that no orders or decrees should be rendered herein unless and until the dispute has been resolved and the ownership of the funds has been determined.

WHEREFORE, mover respectfully prays that the complaint filed herein be dismissed. And for all general and equitable relief.

A. J. WAECHTER, JR. & GEORGE DENEGRE OF  
JONES, WALKER, WAECHTER, POITEVENT, CAR-  
RERE & DENEGRE, Attorneys for Mover.  
1547 National Bank of Commerce Bldg.,  
New Orleans, 12, Louisiana.



Clerk's Office, a true copy, June 16, 1962.

MURIEL H. JONES, Deputy Clerk, U.S. District Court,  
Eastern District of Louisiana, New Orleans, La.

**CERTIFICATE**

I hereby certify that a copy of the above and foregoing motion has been served on opposing counsel by placing a copy of same in the United States Mail, postage prepaid, on this 5th day of December, 1960.

(Sgd.) A. J. WAECHTER, JR.

Clerk's Office, a true copy, June 16, 1962.

MURIEL H. JONES, Deputy Clerk, U.S. District Court,  
Eastern District of Louisiana, New Orleans, La.

3

## DIRECTORS

LEON E. BER  
EDWARD L. CHAPOTEL  
*Vice President, Katz & Bosthoff, Inc.*

→ GEORGE DENÈGRE  
*Attorney*

LAURANCE EUSTIS, JR.  
*Eustis & Godchaux*

RALPH H. FISHMAN  
*Attorney*

RUFUS W. FONTENOT

OLIN LINN  
*President, New Orleans Motor Co., Inc.*

MORGAN W. McCALL  
*Executive Vice-President  
Louisiana Industries, Inc.*

→ LAWRENCE A. MERRIGAN  
*President*

deLESSEPS S. MORRISON  
*Mayor, City of New Orleans*

RICHARD M. NASH

ROBERT J. PATERSON  
*R. J. Paterson Insurance Agency*

AUGUST PEREZ, JR.  
*August Perez & Associates, Architects*

HAROLD T. SHALETT  
*Berkshire Oil Co.*

FISHER E. SIMMONS, JR., C.L.U.  
*General Agent,  
Pan-American Life Insurance Co.*

JOSEPH B. STOREY  
*Vice-President, Southdown, Inc.*

→ A. J. WAECHTER, JR.  
*Attorney*

LOUIS H. YARRUT

CHARLES C. ZATARAIN  
*Chas. C. Zatarain & Son, Brokers*

Filed June 21, 1962

## EXHIBIT E

## OFFICERS—MAIN OFFICE

LAWRENCE A. MERRIGAN  
*President*

JACQUES A. LIVAUDAIS  
*Executive Vice-President*

OLIN LINN  
*Vice-President*

RICHARD M. NASH  
*Vice-President*

RALPH M. FRANCE  
*Vice-President*

JOHN E. PREVOST  
*Assistant Vice-President & Cashier*

STEPHEN J. LOUP, JR.  
*Assistant Vice-President & Comptroller*

LOUIS V. CARAMBAT  
*Assistant Vice-President*

DONALD C. HANEY  
*Assistant Vice-President*

VINCENT J. PEREZ, III  
*Auditor*

THOMAS A. DAVENPORT  
*Assistant Cashier*

KATHERINE EBRENZ  
*Assistant Cashier*

ARTHUR J. PARHAM  
*Assistant Cashier*

BEAUREGARD A. REDMOND  
*Assistant Cashier*

ROBERT S. REHM  
*Assistant Cashier*

H. KEITH SEYMOUR  
*Assistant Cashier*

HENRY F. THOMPSON  
*Assistant Cashier*

AUGUST J. TRAMONTE  
*Assistant Cashier*

MARCUS TULLY II  
*Assistant Cashier*

ANITA MAYER  
*Vault Custodian*

MRS. MARGARET JOHNSON  
*Manager, School Savings Department*

BERTHE ARTIGUES  
*Administrative Secretary to the Board*

**JONES, WALKER, WAECHTER, POITEVENT, CARRERE & DENEGRI**

General Civil and  
Admiralty Practice in the  
State and Federal Courts

1547 NATIONAL BANK OF COMMERCE BUILDING  
NEW ORLEANS 12, LOUISIANA

Telephone  
523-6641  
LD. 444  
Cable Address  
"JOWA"

**MEMBERS OF FIRM**

**Joseph Merrick Jones**, born New Orleans, Louisiana, August 30, 1903; admitted to bar, 1925, Louisiana. Preparatory education, The Hill School and Tulane University of Louisiana (A.B., 1925); legal education, Tulane University of Louisiana (LL.B., 1925). *Fraternities*: Phi Delta Phi; Order of Coif. President, Board of Administrators, Tulane University Educational Fund, 1950—. *Member*: New Orleans (President, 1955), Louisiana State (Member, Board of Governors, 1953-54) and American Bar Associations; International Association of Insurance Counsel.

**Arthur J. Waechter, Jr.**, born New Orleans, Louisiana, November 20, 1913; admitted to bar, 1936, Louisiana. Preparatory education, Tulane University, New Orleans, La. (B.A., 1934); legal education, Tulane (LL.B., 1936). *Fraternities*: Phi Delta Phi; Order of Coif. Professor of Law, Tulane University, 1947—.

Law Association of the United States; International Association of Insurance Counsel.

**George Denegri**, born New Orleans, Louisiana, October 10, 1923; admitted to bar, 1944, Louisiana. Preparatory education, Yale University (1943); legal education, Tulane University (LL.B., 1948). *Fraternities*: Phi Delta Phi; Order of Coif. *Member*: New Orleans, Louisiana and American Bar Associations; Maritime Law Association of the United States.

**Michael J. Melony, Jr.**, born New Orleans, Louisiana, September 2, 1922; admitted to bar, 1950, Louisiana. Preparatory education, Tulane University; legal education, Tulane University (LL.B., 1950). *Fraternity*: Phi Delta Phi. *Associate Secretary and Ex-Officio Member of* Louisiana State Law Institute, 1958—.

13 local economic and social organizations; to prevent the un-  
14 desirable concentration of control in the banking field to the  
15 detriment of the public interest; to insure effective competi-  
16 tion among all banking institutions; and, to accomplish these  
17 objectives by prohibiting the formation of new banking  
18 holding companies and the acquisition of control by what-  
19 ever means of additional banking institutions by existing  
20 bank holding companies and by their subsidiaries.

21 **SECTION 2. DEFINITIONS.**

22 (a) "Bank holding company" means any company, in-  
23 cluding a bank, (1) which directly or indirectly owns, con-  
24 trols, or holds with power to vote, 15 per centum or more  
25 of the voting shares of any bank, or (2) which controls in  
26 any manner the election of a majority of the directors of  
27 any bank, or (3) for the benefit of whose shareholders or  
28 members 15 per centum or more of the voting shares of  
29 any bank or a bank holding company is held by trustees;  
30 and for the purposes of this Act, any successor to any such  
31 company shall be deemed to be a bank holding company  
32 from the date as of which such predecessor company became

*Handwritten signature*

*EXHIBIT 11*

Filed June 21, 1962

EXHIBIT F

"Martindale - Hubbell Law Directory  
Fifty-Fourth Year - 1962 - Volume II"

## MEMBERS OF FIRM

Joseph Merrick Jones, born New Orleans, Louisiana, August 30, 1903; admitted to bar, 1925, Louisiana. Preparatory education, The Hill School and Tulane University of Louisiana (A.B., 1925); legal education, Tulane University of Louisiana (LL.B., 1925). *Fraternities:* Phi Delta Phi; Order of Coif. President, Board of Administrators, Tulane University Educational Fund, 1950—. *Member:* New Orleans (President, 1955), Louisiana State (Member, Board of Governors, 1953-54) and American Bar Associations; International Association of Insurance Counsel.

Arthur J. Wachter, Jr., born New Orleans, Louisiana, November 20, 1913; admitted to bar, 1936, Louisiana. Preparatory education, Tulane University, New Orleans, La. (B.A., 1934); legal education, Tulane (LL.B., 1936). *Fraternities:* Phi Delta Phi; Order of Coif. Professor of Law, Tulane University, 1947—. *Member:* New Orleans, Louisiana State and American Bar Associations; International Association of Insurance Counsel; Maritime Law Association of the United States.

J. Mort Walker, Jr., born New Orleans, Louisiana, February 10, 1904; admitted to bar, 1936, Louisiana. Preparatory education, Tulane University (B.E., 1925); legal education, Loyola University of the South (LL.B., 1936). *Member:* of The Council, Louisiana State Law Institute, 1938-44. Professor of Law, Loyola University of the South, 1936-44. *Member:* New Orleans, Louisiana State (Member, Board of Governors, 1942-43, 1944-45) and American Bar Associations.

Louis J. Darrah, born Hattiesburg, Mississippi, July 17, 1906; admitted to bar, 1932, Louisiana. Preparatory education, University of Mississippi and Loyola University of the South; legal education, Loyola University of the South (LL.B., 1932). *Fraternity:* Delta Theta Phi. *Member:* New Orleans, Louisiana State and American Bar Associations.

Edward B. Poltevant, born New Orleans, Louisiana, June 15, 1913; admitted to bar, 1937, Louisiana. Preparatory education, Tulane University (B.A., 1935); legal education, Tulane University (LL.B., 1937). *Member:* New Orleans, Louisiana State and American Bar Associations.

Ernest A. Carrère, Jr., born New Orleans, Louisiana, September 26, 1915; admitted to bar, 1938, Louisiana. Preparatory education, Tulane University; legal education, Tulane University (LL.B., 1938). *Fraternities:* Phi Delta Phi; Omicron Delta Kappa. *Member:* New Orleans, Louisiana State and American Bar Associations; Maritime

Law Association of the United States; International Association of Insurance Counsel.

George Dumas, born New Orleans, Louisiana, October 10, 1923; admitted to bar, 1948, Louisiana. Preparatory education, Yale University (1943); legal education, Tulane University (LL.B., 1948). *Fraternities:* Phi Delta Phi; Order of Coif. *Member:* New Orleans, Louisiana State and American Bar Associations; Maritime Law Association of the United States.

Michael J. Molony, Jr., born New Orleans, Louisiana, September 2, 1923; admitted to bar, 1951, Louisiana. Preparatory education, Tulane University; legal education, Tulane University (LL.B., 1950). *Fraternity:* Phi Delta Phi. Assistant Secretary and Ex-Officio Member of Louisiana State Law Institute, 1958—. Instructor, Labor Law, Tulane University, University of 1953-59. *Member:* New Orleans, Louisiana State (Secretary, 1957-58; 1958-59; Member, Board of Governors, 1959-60) and American Bar Associations.

John V. Bass, born New Orleans, Louisiana, December 29, 1927; admitted to bar, 1951, Louisiana. Preparatory education, Louisiana State University and Tulane University (B.S., 1947); legal education, Tulane University (LL.B., 1951). *Fraternity:* Phi Delta Phi. *Member:* New Orleans, Louisiana State and American Bar Associations; Maritime Law Association of the United States; International Association of Insurance Counsel.

James M. Burlingame, born Great Falls, Montana, December 25, 1936; admitted to bar, 1961, Louisiana. Preparatory education, Tulane University (B.A., 1949); legal education, Tulane University (LL.B., 1950). *Fraternity:* Phi Delta Delta. *Member:* New Orleans, Louisiana State and American Bar Associations.

Robert B. Acomb, Jr., born New Orleans, Louisiana, July 28, 1930; admitted to bar, 1951, Louisiana. Preparatory education, Tulane University (B.B.A., 1951); legal education, Tulane University (LL.B., 1953). *Fraternities:* Phi Delta Phi; Omicron Delta Kappa. *Member:* New Orleans, Louisiana State and American Bar Associations; Maritime Law Association of the United States.

Lucius F. Sutton, born New Orleans, Louisiana, July 24, 1928; admitted to bar, 1952, Louisiana. Preparatory education, Tulane University of Louisiana (B.A., 1950); legal education, University of Virginia (LL.B., 1952). *Member:* New Orleans, Louisiana State and American Bar Associations.

ED

1962

HARRY M. BULL

## J.S. WALKER, WAECHTER, POITEVENT, CARRÈRE &amp; DENÈGRE (Continued)

Rosen, II, born New Orleans, Louisiana, May 29, 1925; admitted to bar, 1951, Louisiana. Preparatory education, Isidore Newman School, Metairie, La. and Tulane University (A.B., 1946); legal education, Tulane University (LL.B., 1950). *Fraternity*: Phi Delta Phi. *Member*: New Orleans, Louisiana State and American Bar Associations.

L. Upton, born New Orleans, Louisiana, May 16, 1913; admitted to bar, 1950, Louisiana. Preparatory education, Tulane University of Louisiana; legal education, Tulane University (LL.B., 1950). *Fraternity*: Phi Delta Phi. *Member*: New Orleans and Louisiana State Bar Associations.

W. Browne, Jr., born New Orleans, Louisiana, April 14, 1933; admitted to bar, 1956, Louisiana. Preparatory education, Tulane University of Louisiana (B.A., 1954); legal education, University of Louisiana (LL.B., 1956). *Fraternities*: Phi Delta Phi; Omicron Delta Kappa. *Member*: New Orleans, Jefferson County, Louisiana and American Bar Associations.

Bernstein, born New Orleans, Louisiana, May 12, 1930; admitted to bar, 1957, Louisiana. Preparatory education, University of Alabama (B.S., 1952); legal education, Tulane University (LL.B., 1957). *Fraternity*: Phi Delta Phi. *Member*: Student Board of Editors, Tulane Law Review, 1954-1956. *Member*: New Orleans, Louisiana State and American Bar Associations.

S. Sims, born New Orleans, Louisiana, December 2, 1924; admitted to bar, 1951, Louisiana. Preparatory education, Tulane University (B.S., 1946); legal education, Tulane University (LL.B., 1950). *Fraternity*: Phi Alpha Delta. *Member*: New Orleans, Louisiana State and American Bar Associations.

## OF COUNSEL

Rosen (1872-1957)

May (1876-1961)

## ASSOCIATES

J. Schulze, born New Orleans, Louisiana, February 3, 1916; admitted to bar, 1938, Louisiana. Preparatory education, Tulane University (B.S., 1936); legal education, Tulane University (LL.B., 1938). *Fraternity*: Phi Delta Phi. *Member*: New Orleans and Louisiana State Bar Associations.

E. Hall, Jr., born New Orleans, Louisiana, November 14, 1926; admitted to bar, 1952, Louisiana. Preparatory education, Tulane University of Louisiana (B.B.A., 1950); legal education, University of Louisiana (LL.B., 1952). *Fraternity*: Phi Delta Phi. *City Attorney's Office*, New Orleans, 1954-1956. *Member*: New Orleans, Louisiana State and American Bar Associations.

W. Lane, III, born Shreveport, Louisiana, December 11, 1932; admitted to bar, 1958,

Louisiana. Preparatory education, Tulane University (B.B.A., 1954); legal education, Tulane University (LL.B., 1959). *Fraternity*: Phi Delta Phi. *Member*: Tulane Moot Court Board. *Member*: New Orleans, Louisiana State and American Bar Associations.

John J. Weigel, born New Orleans, Louisiana, February 4, 1932; admitted to bar, 1956, Louisiana. Preparatory education, Louisiana State University; legal education, Tulane University (LL.B., 1956). *Fraternities*: Phi Delta Phi; Omicron Delta Kappa. *Member*: New Orleans, Louisiana State and American Bar Associations.

Donald L. King, born New Orleans, Louisiana, September 19, 1933; admitted to bar, 1956, Louisiana and U. S. District Court, Eastern District of Louisiana. Preparatory education, Tulane University (A.B., 1954); legal education, Tulane University (LL.B., 1956). *Fraternities*: Phi Beta Kappa; Omicron Delta Kappa; Phi Delta Phi. *Member*, Board of Editors, Tulane Law Review, 1954-1956. *Member*: New Orleans, Louisiana State and American Bar Associations.

James Larkin Selman, II, born New Orleans, Louisiana, June 24, 1934; admitted to bar, 1959, Louisiana. Preparatory education, University of Notre Dame and Tulane University (B.A., 1957); legal education, Tulane University (LL.B., 1959). *Fraternity*: Phi Delta Phi. *Member*: New Orleans and Louisiana State Bar Associations.

Charles K. Reasonover, born New Orleans, Louisiana, March 30, 1934; admitted to bar, 1960, Louisiana. Preparatory education, Louisiana State University (B.S., 1955); legal education, Tulane University (LL.B., 1960). *Fraternity*: Phi Delta Phi. *Member*, Board of Editors, Tulane Law Review, 1959-1960. *Member*: Louisiana State and American Bar Associations.

Thomas P. Walshe, Jr., born New Orleans, Louisiana, February 17, 1934; admitted to bar, 1958, Louisiana. Preparatory education, Loyola University (A.B., 1958); legal education, Loyola University (LL.B., 1958). *Fraternities*: Delta Theta Phi; Blue Key; Alpha Sigma Nu; Delta Epsilon Sigma. *National President*, Association of International Relations Societies, 1956-1957. *Member*: Louisiana State Bar Association.

Quintin T. Hardtner, III, born Shreveport, Louisiana, March 5, 1936; admitted to bar, 1961, Louisiana. Preparatory education, Tulane University of Louisiana (B.B.A., 1957); legal education, Tulane University of Louisiana (LL.B., 1961). *Fraternity*: Phi Delta Phi. *Member*: Louisiana State Bar Association.

Edmond C. Salas, born New Orleans, Louisiana, September 5, 1933; admitted to bar, 1961, Louisiana. Preparatory education, Georgetown University, Tulane University of Louisiana and Centenary College (B.A., 1955); legal education, Tulane University



**JONES, WALKER, WAECHTER, POITEVENT, CARRÈRE & DENÈGRE (Continued)**

of Louisiana (LL.B., 1961). *Fraternities:* Omicron Delta Kappa; Phi Delta Phi. *Chief Justice, Tulane Moot Court Board, 1960-1961. Member, Louisiana State and American Bar Associations.*

**REPRESENTATIVE CLIENTS:** The Bank of New Orleans; The National Bank of Commerce in New Orleans; Brown's Velvet Dairy Products, Inc.; C. H. Fournier, Inc.; The Louisiana Cold-Can Bottling Co., Ltd.; Helman Bakeries, Inc.; Keller Construction Corp.; Louis Israel & Bros., Inc.; McElhenny Co.; Proctor & Ford, Ltd., Inc.; Southern Pine Assn.; Southdown, Inc.; Standard Supply & Hardware Co.; Dr. G. H. Tishman's Antiseptic Co.; Wynn-Dixie La., Inc.; Liberty Mutual Insurance Co.; The Mutual Life Insurance Co. of New York; Neau, Gibbs & Co.; The Prudential Insurance Co. of America; The Travelers Indemnity Co.; The Travelers Insurance Co.; Western Casualty & Surety Co.; Acetral Oil Co., Inc.; Francis A. Callery; Continental Oil Co.; Louisiana-Delta Offshore Corp.; John W. Mason; Mobil Oil Co.; Tranco Inc.; Union Producing Co.; United Gas Pipe Line Co.; Canal Barge Co., Inc.; Central Gulf Steamship Corp.; Compania Maritima Unida, S. A.; National Airlines, Inc.; New Orleans Public Belt Railroad; New Orleans Public Service, Inc.; Ryder System, Inc.

**EDWARD A. KALINSKI**

*General Civil Practice  
Probate, Corporation and  
Real Estate Law*

(Successor to Dreyfous & Kalinski)

1609 NATIONAL BANK OF COMMERCE BUILDING

NEW ORLEANS 12, LOUISIANA

Telephone

Jackson 5-6411

Felix J. Dreyfous (1857-1946).

George A. Dreyfous (1894-1961).

Edward A. Kalinski, born Mobile, Ala., Feb. 14, 1913; adm. to bar, 1941, Louisiana. Prep. education, Loyola University in New Orleans; legal education, Tulane University. *Member:* Louisiana State and American Bar Associations.

**ASSOCIATE**

Bruce J. Borrello, born New Orleans, Louisiana, September 19, 1932; admitted to bar, Louisiana. Preparatory education, Louisiana State University and A. and M. College (B.A.); legal education, Tulane University (LL.B., 1961). *Member:* Louisiana State Bar Association.

*General Civil Practice,  
State and Federal Courts,  
Corporation, Real Estate,  
Oil and Gas, Probate, Estate  
and Banking Law*

**KEPPER, MOULIN & KEPPER**

515 HIBERNIA BANK BUILDING

NEW ORLEANS 12, LOUISIANA

**MEMBERS OF FIRM**

James H. Kepper, Jr., born New Orleans, Louisiana, March 14, 1912; admitted to bar, 1935, Louisiana. Preparatory education, Tulane University (B.A., 1933); legal education, Tulane University (LL.B., 1935). *Fraternity:* Phi Beta Kappa. Member, Board of Editors, Tulane Law Review, 1933-35. *Member:* New Orleans and Louisiana State Bar Associations.

Albert E. Moulin, born New Orleans, Louisiana, November 6, 1889; admitted to bar, 1919, Louisiana. Education, Loyola University, New Orleans, La. (LL.B., 1919). Public Administrator, 1948-1950. *Member:* New Orleans and Louisiana State Bar Associations.

Stewart J. Kepper, born New Orleans, Louisiana, April 28, 1919; admitted to bar, 1942, Louisiana.

Telephone

524-0774

siana. Preparatory education, Tulane University (A.B., 1940); legal education, Tulane University (LL.B., 1942). *Fraternity:* Phi Delta Phi. Member, 1940-1942 and Chairman, 1941-1942, Moot Court Board, Tulane University. *Member:* New Orleans, Louisiana State and American Bar Associations.

**ASSOCIATE**

John M. Currier, born Knoxville, Tennessee, September 9, 1930; admitted to bar, 1959, Louisiana. Preparatory education, Tulane University (B.S. in Ch. E., 1955); legal education, University of Louisiana (LL.B., 1959). *Fraternity:* Phi Delta Phi. Special Counselor to the General, 1959-. *Member:* Louisiana State and American Bar Associations.

(His and others)

Filed June 26, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857 -62

[Title omitted]

PLAINTIFFS' OPPOSITION TO MOTION OF WHITNEY NATIONAL  
BANK IN JEFFERSON PARISH TO INTERVENE AS A DEFENDANT.

Come now the plaintiffs, Bank of New Orleans & Trust Company and Guaranty Bank & Trust Company, and oppose the Motion of Whitney National Bank in Jefferson Parish to intervene as a defendant in these proceedings for the following reasons:

1. Whitney National Bank in Jefferson Parish is not the real party in interest in this controversy. Applicant is merely the corporate alter ego of Whitney National Bank of New Orleans and therefore should not be permitted to prosecute any action on its own behalf in this proceeding as a matter of right or permission; and said applicant cannot in any respect adequately represent the real interest involved, which is that of the Whitney National Bank of New Orleans to open and operate a new branch or branches in Jefferson Parish, Louisiana, in circumvention of *Section 36* of the National Bank Act.

Respectfully submitted,

EDWARD L. MERRIGAN  
Attorney for Plaintiffs,  
425 13th St., N.W.,  
Washington, 4, D.C.

Filed June 21, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

DEFENDANT'S RESPONSE TO MOTION OF WHITNEY NATIONAL  
BANK IN JEFFERSON PARISH TO INTERVENE AS A DEFENDANT

Comes now the defendant Comptroller of the Currency,  
through his undersigned counsel, and states to the Court  
that he has no objection to the granting of the motion of  
Whitney National Bank in Jefferson Parish to intervene  
as a defendant in this action.

/s/ JOSEPH D. GUILFOYLE,  
*Acting Assistant Attorney General.*

/s/ DONALD B. MACGUINEAS,

/s/ DAVID V. SEAMAN,  
*Attorneys, Department of Justice,  
Attorneys for Defendant.*

*Of Counsel:*

DAVID C. ACHESON,  
*United States Attorney*

Filed June 26, 1962

STATE OF LOUISIANA,  
Parish of Orleans.

Before me the undersigned authority, personally came and appeared: MORGAN L. WHITNEY, who being duly sworn did depose and say: That he is of full age, a resident of the City of New Orleans, Vice President of the Whitney National Bank of New Orleans and member of the Board of Directors of the Louisiana Bankers Association; that:

(1) he attended a special meeting of the Board of Directors of the Louisiana Bankers Association held at Baton Rouge, January 24, 1962 called to consider a so-called Uniform State Bank Holding Company Bill which has been introduced in the Louisiana Legislature as House Bill No. 1221 (See Exhibit A attached), the passage of which is now being strenuously urged by Plaintiff, Bank of New Orleans & Trust Co. (see telegrams of Lawrence A. Merrigan, President, Exhibits B and C);

(2) at said meeting a resolution was offered by John Oulliber, President of National Bank of Commerce in New Orleans, to amend said House Bill No. 1221 by adding thereto a subsection 5 to Section 3 which would specifically prevent Whitney National Bank of Jefferson Parish, though completely organized, to commence business whether or not a certificate to commence business has been received from the Comptroller (see Exhibit D attached).

(3) Said resolution proposed by Mr. Oulliber was adopted by a vote of four to one. Two of the members voting in favor of the amendment were Lawrence A. Merrigan, President of plaintiff, Bank of New Orleans and Trust Company and Clebert C. Smith, Director of the National Bank of Commerce in Jefferson Parish and an Executive Vice President of National Bank of Commerce in New Orleans.

MORGAN L. WHITNEY.

Sworn to and subscribed before me at New Orleans, La., this 25 day of June, 1962.

BARTHOLOMEW P. SULLIVAN, JR.  
Notary Public.

1 **HOUSE BILL No. 1221—**

2 By Mr. Angelle (By Request):

3 **AN ACT**

4 To define the bank holding company, to prohibit the forma-  
5 tion of new bank holding companies, and to control the  
6 future expansion of existing bank holding companies and  
7 of their subsidiaries.

8 **SECTION 1. DECLARATION OF POLICY**

9 It is declared to be the policy of this State to protect  
10 and to foster the growth of the independent unit bank, and  
11 institution whose ownership and origins are grounded in the  
12 local community and whose activities are bound up with  
13 local economic and social organizations; to prevent the un-  
14 desirable concentration of control in the banking field to the  
15 detriment of the public interest; to insure effective competi-  
16 tion among all banking institutions; and, to accomplish these  
17 objectives by prohibiting the formation of new banking  
18 holding companies and the acquisition of control by what-  
19 ever means of additional banking institutions by existing  
20 bank holding companies and by their subsidiaries.

21 **SECTION 2. DEFINITIONS.**

22 (a) "Bank holding company" means any company, in-  
23 cluding a bank, (1) which directly or indirectly owns, con-  
24 trols, or holds with power to vote, 15 per centum or more  
25 of the voting shares of any bank, or (2) which controls in

9 The State Bank Commissioner shall administer and carry  
10 out the provisions of this Act and may issue such regulations  
11 and orders as may be necessary to discharge this duty and  
12 to prevent evasions of the Act.

13 **SECTION 6. SAVINGS CLAUSE.**

14 Nothing herein contained shall be interpreted or con-  
15 strued as approving any act, action, or conduct which  
16 is or has been or may be in violation of any existing law,  
17 nor shall anything herein contained constitute a defense  
18 to any action, suit or proceeding pending or hereafter in-  
19 stituted on account of any prohibited antitrust or mono-  
20 polistic act, action, or conduct.

21 **SECTION 7. SEPARABILITY.**

22 If any provision of this Act or the application of such  
23 provision to any person or circumstance, shall be held in-  
24 valid, the remainder of the Act, and the application of  
25 such provision to persons or circumstances other than those  
26 to which it is held invalid, shall not be affected thereby.

1 a bank holding company. Notwithstanding the foregoing,  
2 (A) no company shall be a bank holding company by virtue  
3 of its ownership or control of shares acquired by it in  
4 connection with its underwriting of securities and which  
5 are held only for such period of time as will permit the  
6 sale thereof upon a reasonable basis, and (B) no company  
7 formed for the sole purpose of participating in a proxy  
8 solicitation shall be a bank holding company by virtue of  
9 its control of voting rights of shares acquired in the course  
10 of such solicitation.

11 (b) "Company" means any corporation, business trust, part-  
12 nership, <sup>indian co.</sup> joint venture, association, or similar organization  
13 ~~doing business in this State~~, but shall not include (1) any  
14 corporation the majority of the shares of which are owned  
15 by the United States or by any State, or (2) any corpora-  
16 tion of community chest, fund, or foundation organized  
17 and operated exclusively for religious, charitable, or ed-  
18 ucational purposes, no part of the net earnings of which  
19 inures to the benefit of any private shareholder or in-  
20 dividual, and no substantial part of the activities of which  
21 is carrying on propaganda, or otherwise attempting to in-  
22 fluence legislation.

23 (c) "Bank" means any commercial bank, savings bank,  
24 trust company or similar organization doing business in this  
25 State.



9. its control of voting rights of shares acquired in the course  
10 of such solicitation.

11 (b) "Company" means any corporation, business trust, part-  
12 nership, <sup>indiv. co.</sup> joint venture, association, or similar organization  
13 ~~doing business in this State~~, but shall not include (1) any  
14 corporation the majority of the shares of which are owned  
15 by the United States or by any State, or (2) any corpora-  
16 tion of community chest, fund, or foundation organized  
17 and operated exclusively for religious, charitable, or ed-  
18 ucational purposes, no part of the net earnings of which  
19 inures to the benefit of any private shareholder or in-  
20 dividual, and no substantial part of the activities of which  
21 is carrying on propaganda, or otherwise attempting to in-  
22 fluence legislation.

23 (c) "Bank" means any commercial bank, savings bank,  
24 trust company or similar organization doing business in this  
25 State.

26 (d) "Subsidiary," with respect to a specified bank holding  
27 company, means (1) any company 15 per centum or more of  
28 whose voting shares (excluding shares owned by the United  
29 States or by any company wholly owned by the United  
30 States) is owned or controlled by such bank holding company;  
31 or (2) any company the election of a majority of whose di-  
32 rectors is controlled in any manner by such bank holding

1 company; or (3) any company 16 per centum or more of  
2 whose voting shares are held by trustees for the benefit of  
3 the shareholders or members of such bank holding company.

4 (e) The term "successor" shall include any company which  
5 acquires directly or indirectly from a bank holding company  
6 shares of any bank, when and if the relationship between  
7 such company and the bank holding company is such that  
8 the transaction effects no substantial change in the control  
9 of the bank or beneficial ownership of such shares of such  
10 bank.

11 SECTION 3. PROHIBITIONS UPON ACQUISITIONS OF  
12 BANK SHARES OR ASSETS.

13 It shall be unlawful (1) for any action to be taken which  
14 results in a company or a bank becoming a bank holding  
15 company as defined in this Act; (2) for any bank holding  
16 company or subsidiary thereof to acquire direct or indirect  
17 ownership or control of any voting shares of any bank if,  
18 after such acquisition, such company or subsidiary will directly  
19 or indirectly own or control more than 5 per centum of the vot-  
20 ing shares of such bank; (3) for any bank holding company or  
21 subsidiary thereof to acquire all or substantially all of the as-  
22 sets of a bank; or (4) for any bank holding company or sub-  
23 sidiary thereof to merge or consolidate with any other bank  
24 holding company or any subsidiary thereof. Notwithstanding  
25 the foregoing, this prohibition shall not apply to additional  
26 shares acquired by a bank holding company in a bank in which

12 BANK SHARES OR ASSETS.

13 It shall be unlawful (1) for any action to be taken which  
14 results in a company or a bank becoming a bank holding  
15 company as defined in this Act; (2) for any bank holding  
16 company or subsidiary thereof to acquire direct or indirect  
17 ownership or control of any voting shares of any bank if,  
18 after such acquisition, such company or subsidiary will directly  
19 or indirectly own or control more than 5 per centum of the vot-  
20 ing shares of such bank; (3) for any bank holding company or  
21 subsidiary thereof to acquire all or substantially all of the as-  
22 sets of a bank; or (4) for any bank holding company or sub-  
23 sidiary thereof to merge or consolidate with any other bank  
24 holding company or any subsidiary thereof. Notwithstanding  
25 the foregoing, this prohibition shall not apply to additional  
26 shares acquired by a bank holding company in a bank in which  
27 such bank holding company owned or controlled a majority  
28 of the voting shares prior to such acquisition.

29 SECTION 4. PENALTIES.

30 Any bank, bank holding company, company, or any subsid-  
31 iary of any of them which willfully violates any provision  
32 of this Act, or any regulation or order issued by the State

1 Bank Commissioner pursuant thereto, shall upon conviction  
2 be fined not less than \$500 nor more than \$1,000 for each  
3 day during which the violation continues. Any individual  
4 who willfully participates in a violation of any provision  
5 of this Act shall upon conviction be fined not less than  
6 \$1,000 nor more than \$5,000 or imprisoned not more than  
7 one year, or both.

8 SECTION 5. ADMINISTRATION.

9 The State Bank Commissioner shall administer and carry  
10 out the provisions of this Act and may issue such regulations  
11 and orders as may be necessary to discharge this duty and  
12 to prevent evasions of the Act.

13 SECTION 6. SAVINGS CLAUSE.

14 Nothing herein contained shall be interpreted or con-  
15 strued as approving any act, action, or conduct which  
16 is or has been or may be in violation of any existing law,  
17 nor shall anything herein contained constitute a defense  
18 to any action, suit or proceeding pending or hereafter in-  
19 stituted on account of any prohibited antitrust or mono-  
20 polistic act, action, or conduct.

21 SECTION 7. SEPARABILITY.

22 If any provision of this Act or the application of such  
23 provision to any person or circumstance, shall be held in-  
24 valid, the remainder of the Act, and the application of  
25 such provision to persons or circumstances other than those

## EXHIBIT B

DOMESTIC SERVICE	
Check the class of service desired, otherwise this message will be sent as a fast telegram	
TELEGRAM	
DAY LETTER	
NIGHT LETTER	

S  
S  
E

# WESTERN UNION TELEGRAM

1206 (1-33)

W. P. MARSHALL, PRESIDENT

INTERNATIONAL SERVICE	
Check the class of service desired, otherwise the message will be sent at the full rate	
FULL RATE	
LETTER TELEGRAM	
SHORE S-P	

NO. WDS - CL. OF SVC.	PD. OR COLL.	CASH NO.	CHARGE TO THE ACCOUNT OF	TIME FILED

Send the following message, subject to the terms on back hereof, which are hereby agreed to

C. A. Henricks Jr, President

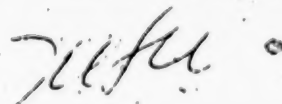
Guaranty Bank &amp; Trust Co.

Gretna La.

If your primary interest is to preserve the independent unit banks in Louisiana and protect them against the unfair advantage of State wide branch banking, please immediately wire or call your representative in the State Legislature. Support of House Bill 1221 will guarantee maintenance of the unit independent banking system. Present State laws do not permit State Wide branch banking. House Bill 1221 prohibits State Wide branch banking through holding companies. The experience of those States permitting branch banking proves conclusively that independent banking cannot compete and results in the reduction of the number of banks in the State. I strongly urge your support of House Bill 1221. The matter is before the house of Representatives at this time.

(Signed) Lawrence A. Merrigan, President

Bank of New Orleans and Trust Company



L. A. Merrigan

EXHIBIT D

PROPOSED AMENDMENT TO SECTION 3 OF HOUSE BILL NO. 1221

Add new Sub-section (5) as follows:

"(5) for any bank holding company or subsidiary thereof to open for business any bank not now open for business whether or not a charter, permit, license or certificate to open for business has already been issued."



Filed June 26, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

CITY OF WASHINGTON,  
District of Columbia, ss:

Lawrence A. Merrigan, being duly sworn, deposes and says:

1. I am the President of plaintiff, Bank of New Orleans & Trust Company, and I submit this affidavit for the following reasons and to bring the following facts before the Court:

(a) I want to verify that I have read the complaint herein and the affidavit of plaintiffs' counsel submitted in support of the motion for preliminary injunction, and to the best of my knowledge, information and belief all allegations and matters therein set forth are true and correct.

(b) I want to verify for this Court also that unless the Court grants the preliminary injunction prayed for herein, plaintiff, Bank of New Orleans & Trust Company, will suffer severe, permanent and irreparable damage for which it has no adequate remedy. As stated in the complaint, to permit the establishment of a branch of the Whitney National Bank of New Orleans in Jefferson Parish, Louisiana at a time when this plaintiff and all state banks similarly situated are confined by law to the limits of Orleans Parish would cause vast damage to our property and business, principally as regards the very substantial banking business of this bank emanating from sources in Jefferson Parish. We would be confronted with what we believe to be a new, impossible-to-meet competition from the combined resources of the largest bank in Louisiana.

(c) I have received from the State Bank Commissioner of Louisiana and file herewith copies of the following documents:

(i) *copy of letter* dated June 21, 1962, written by the the said State Bank Commissioner of Louisiana to the

Chairman of the Board of Governors of the Federal Reserve System.

(ii) *certified copy of letter opinion of the Attorney General of Louisiana, J. P. F. Gremillion, dated June 13, 1962, addressed to the State Bank Commissioner of Louisiana.*

(d) I have received from plaintiffs' attorney herein, who obtained same from the Executive Office of the President, copy of Memorandum, addressed on March 28, 1962, to the Attorney General, the Comptroller of the Currency and other officials of the federal government, which Memorandum purports to establish a Committee on Financial Institutions, to include the defendant in this action. A copy of said Memorandum of the President of the United States is filed herewith.

(e) Plaintiffs' attorneys have received and I file herewith copy of letter of the Federal Reserve Board of Governors, dated June 25, 1962.

(f) I understand the Comptroller herein has refused to make available copies of any letters which passed between the Comptroller's office and the Federal Reserve Board, or between the Comptroller's offices and attorneys or representatives of the Whitney National Bank or Whitney Holding Corporation with reference to the matters involved in this action.

The Federal Reserve Board, however, has released to us a copy of a letter filed in 1961 with said Board by the Comptroller of the Currency, and said letter is filed herewith.

LAWRENCE A. MERRIGAN.

Sworn to and subscribed before me this 26th day of June, 1962.

ROSE W. DENNIS  
Notary Public.

My Commission Expires May 14, 1965.

Received June 14, 1962

PLAINTIFFS' EXHIBIT E

STATE OF LOUISIANA  
Department of Justice  
Baton Rouge

Jack P. F. Gremillion  
Attorney General

June 13, 1962.

Mr. J. W. Jeansonne,  
State Bank Commissioner,  
State Capitol,  
Baton Rouge, Louisiana.

Dear Commissioner Jeansonne:

This is in reference to your request for an opinion as to (1) whether there is any prohibition in our law of the formation of a national bank holding company by shareholders of a national bank, and (2) if there is no prohibition, whether a national bank holding company may own controlling interest in and operate a branch bank in a parish other than the domicile of the holding company.

We have been unable to find any law which would prohibit the organization and incorporation of such a holding company in the State of Louisiana. In our opinion, under Louisiana law, such a corporation would be considered, for purposes of incorporation, as any other corporation. In fact, I am sure you will recall that some months ago we verbally discussed the matter stated by the first question you pose. We researched the law and concluded in our verbal discussions that there were no violations of Louisiana law, nor prohibitions, that would prevent a national bank from organizing a holding company. We so advised you and we wish now to reiterate our affirmation.

We issued an opinion to you on August 10, 1961, relating to the formation of the Whitney Holding Corporation and the creation by it of the Crescent City National Bank, but that opinion dealt specifically with the question of exemption of issuance of the securities of the Holding Corporation from the provisions of the Louisiana Securities Law, R.S.

51:701, et seq. We held that such securities were exempt within the meaning of R.S. 51:705.

With reference to the second portion of your request, we wish to advise as follows:

R.S. 6:54 provides as follows:

"All banks, savings banks, and trust companies having a capital of one hundred thousand dollars or more may open and maintain a branch office or branch offices in parishes in which there are no state banks, savings banks, and trust companies.

"Not more than one branch office shall be opened in any one parish other than the parish of domicile, and such branch office shall be included in the number of branch offices authorized by Chapters 3 and 4 of this Title. The Branch offices may carry on and conduct all usual transactions authorized by this Title for branch offices.

"No branch office shall be opened without a certificate of authority from the commissioner."

It is evident from a reading of the above statute that the same is intended to prohibit branch banks outside of the Parish in which the main office of a bank is domiciled. The exemptions provided in R.S. 6:55 (the Parishes of Allen, Calcasieu, Cameron, or Jefferson Davis) were made to maintain the status quo of those banks at the time of the passage of these laws.

Our branch banking laws in the State of Louisiana emanated from the well-established belief that the various communities and political sub-divisions of the State can be best served by local banks, which would obviously have peculiar knowledge and information concerning the people and community of the various areas served, and of the belief that such local banks would have a greater interest in the welfare of the specific community or area. It is also generally accepted that a bank, properly operated and regulated, can be the best industry a community may have. It follows, therefore, that it is to the best interest of a community to have such an important institution owned and operated by the citizens of said community, which of course will have a greater interest in the development, growth, and welfare of said community.

Under the Federal law, 12 U.S.C.A. 36(c), a national banking association, with the approval of the Comptroller of the Currency, may establish new branches at any point within a state in which said Association is situated, if such establishment and operation are at the time authorized to state banks by state law. Although we can find no prohibition against the establishment of a bank holding company, we are of the firm opinion that a banking operation may not accomplish by an indirect means, such as a holding company device, what is prohibited directly by law. There is a general principle of law that corporate entities must be disregarded where they are made the implements for avoiding a clear legislative purpose. To allow the establishment of a bank holding company to avoid and circumvent the branch banking laws of our State is, in our opinion, prohibited, if not by the letter, by the spirit of our law.

Evidence of the legislative intent, in this connection, in our opinion, is contained in House Bill No. 1221, which has been introduced and is pending in the Legislature at this time. This Act has for its purpose the prohibition of the formation of bank holding companies. It is interesting to note Section 1 of said Bill, which is a declaration of policy:

"It is declared to be the policy of this State to protect and to foster the growth of the independent unit bank, an institution whose ownership and origins are grounded in the local community and whose activities are bound up with local economic and social organizations; to prevent the undesirable concentration of control in the banking field to the detriment of the public interest; to insure effective competition among all banking institutions; and, to accomplish these objectives by prohibiting the formation of new banking holding companies and the acquisition of control by whatever means of additional banking institutions by existing bank holding companies and by their subsidiaries."

Also, Section 6 of said House Bill No. 1221 provides:

"Nothing herein contained shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of any existing law, nor shall anything herein contained constitute a defense to any action, suit or proceeding, pending or

hereafter instituted on account of any prohibited anti-trust or monopolistic act, action, or conduct."

It is the opinion of this office, therefore, that a bank holding company may not circumvent the branch bank laws of our State by the acquisition of a controlling interest in a subsidiary which is located in a parish other than the domicile of the parent company.

Sincerely yours,

JACK P. F. GREMILLION,  
*Attorney General.*

JPGF:emc

STATE OF LOUISIANA,  
Parish of East Baton Rouge.

This is to certify that the above and foregoing is a true and correct photostatic copy of the opinion of the Attorney General, rendered June 13, 1962, addressed to Mr. J. W. Jeansonne, State Bank Commissioner, and signed by Jack P. F. Gremillion, Attorney General.

J. W. JEANSONNE,  
*State Bank Commissioner.*

Sworn to and subscribed before me this 25th day of June, 1962.

JOSEPH H. KAVANAUGH,  
*Notary Public.*



Filed June 26, 1962

PLAINTIFFS' EXHIBIT F

STATE OF LOUISIANA  
State Banking Department  
Baton Rouge 4, Louisiana

June 21, 1962

Honorable William McChestney Martin, Jr.,  
Chairman,  
Board of Governors of the  
Federal Reserve System,  
Washington 4, D.C.

Dear Mr. Chairman:

I am taking the liberty of enclosing an opinion from our Attorney General in the State of Louisiana that is self-explanatory.

As Commissioner of the Banking Department in the State of Louisiana, I earnestly request that a re-hearing be granted in the matter of approving the plan of the Whitney Holding Corporation, New Orleans, Louisiana, under your ruling of May 3, 1962. In my opinion this ruling seriously affects all State Banks in Louisiana.

On behalf of my Department, I would like to personally appear and voice my opposition. If it is at all feasible I would appreciate the new hearing to be held either in New Orleans or Baton Rouge, Louisiana, at a time convenient to your Board.

Thanking you for your consideration, I remain

Sincerely yours,

J. W. JEANSONNE  
State Bank Commissioner.

JWJ/bc  
Enclosure

## PLAINTIFFS' EXHIBIT H

Received in Records Section October 12, 1961.

TREASURY DEPARTMENT  
Comptroller of the Currency  
Washington 25

October 11, 1961

Board of Governors of the  
Federal Reserve System  
Washington 25, D.C.

Gentlemen:

This will have reference to your letter of July 24, 1961, in which you advise that an application has been filed on behalf of Whitney Holding Corporation (a proposed corporation), New Orleans, Louisiana, to the Board of Governors for prior approval by the Board of action to become a bank holding company through the acquisition of all the voting shares to be issued of each of the following banks: Crescent City National Bank (into which would be consolidated the existing Whitney National Bank of New Orleans, and with the name Whitney National Bank of New Orleans), New Orleans, Louisiana, and Whitney National Bank in Jefferson Parish, Louisiana, which has been approved and is now in organization.

In determining whether or not to recommend your approval of this transaction careful consideration has been given to the following factors: (1) the financial history and condition of the applicant and the banks concerned; (2) the prospects of the applicant and the banks concerned; (3) the character of the management of the applicant and the banks concerned; (4) the convenience, needs and welfare of the communities and the area concerned; and (5) whether or not the effect of the proposed transaction for which approval is desired would be to expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking.

In view of the favorable conditions disclosed by this study it is recommended that you give your approval to this application.

At your request we shall be pleased to discuss in detail the various aspects upon which this recommendation is based.

Sincerely,

RAY M. GIDNEY,  
*Comptroller of the Currency.*

PLAINTIFF'S EXHIBIT I

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
Washington 25, D.C.

June 25, 1962.

Edward L. Merrigan, Esquire,  
425 - 13th Street, N.W.,  
Washington 4, D.C.

Dear Mr. Merrigan:

With your letter dated June 13, 1962, you filed with the Board of Governors, on behalf of three banks located in Louisiana, a Petition for Reconsideration by the Board of its Order of May 3, 1962 (1962 Federal Reserve Bulletin 560), under the Bank Holding Company Act of 1956, permitting Whitney Holding Corporation to become a bank holding company by acquiring substantially all of the voting stock of a bank in New Orleans, Louisiana, and a bank in Jefferson Parish, Louisiana. The Petition requested that the Board revoke its Order of May 3, 1962 and "grant a rehearing herein and after reconsideration by appropriate Order deny the application of the Whitney Holding Corporation."

A Notice of Receipt of the Application on Behalf of Whitney Holding Corporation was published in the Federal Register on July 28, 1961 (26 Federal Register 6792), which provided an opportunity for submission of comments and views regarding the proposed acquisitions. Later, pursuant to Order published in the Federal Register on December 23, 1961 (26 Federal Register 12312), a public proceeding with respect to said Application was held before the Board on January 17, 1962 to provide a further opportunity for the expression of views and opinions by interested persons. The banks represented by you did not submit or express any

comments, views, or opinions. Most of the actions contemplated by the Whitney Reorganization Program, including the acquisitions of stock approved by the Board in its Order of May 3, 1962, were completed, according to information received by the Board, during May 1962, and, as indicated above, your clients' Petition for Reconsideration was submitted to the Board with your letter dated June 13, 1962.

Subparagraph (6) of section 262.2(f) of the Rules of Procedure of the Board of Governors (12 Code of Federal Regulations 262.2(f)(6)), relating to "Bank Holding Company and Merger Applications", reads as follows:

"After action by the Board on an application the Board will not grant any request for reconsideration of its action, unless the request presents relevant facts that, for good cause shown, were not previously presented to the Board, or unless it otherwise appears to the Board that reconsideration would be appropriate."

The Board has considered the reasons advanced in the Petition for Reconsideration. To a considerable extent, these are based upon allegations that the Whitney Reorganization Program was not in conformity with applicable provisions of Federal statutes. It is also alleged that the Board's action "will unnecessarily place into the hands of federally chartered banks a powerful and unfair competitive advantage over State banks . . . ." In the judgment of the Board, those arguments are without substantial merit. In addition, they relate largely to an alleged violation of provisions of the National Bank Act, which is administered by the Comptroller of the Currency, an official of the United States Treasury Department.

In its consideration of the Petition, the Board has also taken into consideration the fact that the Petitioners had ample opportunity to present relevant facts, views, and arguments to the Board during the pendency of the Whitney Holding Corporation proceeding and failed to make any presentation until after the proceeding had terminated, the Board's Order of approval had been issued, and most of the steps in the Reorganization Program had been completed. For the foregoing reasons, the Petition for Reconsideration, Revocation, and Rehearing is denied.

As you are aware, section 9 of the Bank Holding Company Act (12 U.S.C. 1848) relates to judicial review of orders of

the Board of Governors under that Act. Section 9 confers a right to such review on "Any party aggrieved by an order of the Board under this Act". In the event your clients should seek judicial review of the Board's Order in the Whitney matter, the question whether they fall within the quoted description and therefore are entitled to a judicial review is, of course, a question for determination by the United States Court of Appeals having jurisdiction.

In your letter to the Board dated June 18, 1962, you requested access to the letter of October 11, 1961 from Comptroller of the Currency Ray M. Gidney to the Board of Governors, expressing the views and recommendations of the Comptroller on the Whitney Holding Corporation's application, pursuant to section 3(b) of the Bank Holding Company Act (12 U.S.C. 1842(b)). The Board has granted this request, and the Comptroller's letter will be made available for your inspection at your convenience.

Very truly yours,

MERRITT SHERMAN,  
*Secretary.*

Filed June 26, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

Now comes The Bank of Louisiana in New Orleans and respectfully moves the court for leave to intervene as a plaintiff in this action to join with the other plaintiffs herein in seeking the relief prayed for in the original complaint.

The reasons for this motion to intervene are as follows:

(1) Plaintiffs in this action seek a declaratory judgment that the Comptroller of the Currency is prohibited by law from issuing to The Whitney National Bank of New Orleans, and/or the Whitney Holding Corporation and/or Whitney National Bank of Jefferson Parish, a certificate of authority authorizing them, or any of them, to establish new branch bank facilities of the Whitney National Bank of New Orleans in Jefferson Parish through the medium of

Whitney Holding Corporation. The Bank of Louisiana in New Orleans is a State bank with its main office in New Orleans, which, like the original plaintiffs herein, is not permitted by law to expand into Jefferson Parish and will therefore be seriously and adversely affected by action of the Comptroller of the Currency in permitting the Whitney National Bank in New Orleans an unfair competitive advantage over State banks similarly situated:

(2) The relief sought by Mover, the Bank of Louisiana in New Orleans, for permission to intervene, as set forth in the attached pleadings, involve the same questions of law and fact as those involved in the main action;

(3) The interests of Mover for intervention may not be properly represented and Mover will be bound by any final judgment rendered in this action;

(4) Intervention by Mover will not delay these proceedings.

G. HARRISON SCOTT,  
*Civic Center Building,  
 New Orleans, Louisiana.*

Filed June 26, 1962

EXHIBIT J

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
 COLUMBIA

Civil Action No. 1857-62

[Title omitted]

PETITION OF THE BANK OF LOUISIANA IN NEW ORLEANS, INTERVENING PLAINTIFF, FOR DECLARATORY JUDGMENT AND INJUNCTIVE ORDER.

The Bank of Louisiana in New Orleans, for its complaint in intervention as a party plaintiff, alleges:

1. The Bank of Louisiana in New Orleans is a banking corporation existing under the laws of the State of Louisiana, with its main banking offices in the City of New Orleans, State of Louisiana.



2. The Bank of Louisiana in New Orleans has total assets of approximately \$10,000,000.00 and, like original plaintiffs herein, draws some business from residents of the Parish of Jefferson.

3. This intervening plaintiff believes and alleges that the so-called Whitney National Bank Reorganization Program constitutes nothing more nor less than a device for the evasion of federal and state laws prohibiting the establishment of branch banks in parishes beyond the parish of the bank's main office, which, if permitted, will directly adversely affect the business and property of this intervening plaintiff.

Plaintiff herein reiterates as though copied herein in extenso, the allegations of fact contained in the original complaint filed herein, particularly Paragraphs 7 through 17.

4. The Attorney General for the State of Louisiana, in answer to inquiries by the State Banking Commissioner, for an opinion as to the legality of such a bank holding company plan, has rendered as his opinion that "It is the opinion of this office, therefore, that a bank holding company may not circumvent the branch bank laws of our State by the acquisition of a controlling interest in a subsidiary which is located in a parish other than the domicile of the parent company."

WHEREFORE, the Bank of Louisiana in New Orleans prays that the court enter judgment herein declaring and adjudging that the Comptroller of the Currency is prohibited by law from issuing to The Whitney National Bank of New Orleans and/or the Whitney Holding Corporation and/or The Whitney National Bank of Jefferson, a certificate of authority authorizing them, or any of them, to establish new branch bank facilities known as The Whitney National Bank in Jefferson Parish or otherwise in the Parish of Jefferson, Louisiana, and in order to prevent irreparable injury to this plaintiff, joins with the original plaintiffs herein, requesting that this Court grant a preliminary injunction and ultimately a permanent injunction restraining and enjoining the Comptroller of Currency from issuing a certificate or certificates authorizing the establishment of new branch bank facilities by the Whitney National Bank or Whitney Holding Corporation or Whitney National

Bank of Jefferson Parish, or in any other name in the Parish of Jefferson, State of Louisiana.

Intervening plaintiff prays for such general and other equitable relief.

G. HARRISON SCOTT,  
Civic Center Building,  
New Orleans, Louisiana.

Filed June 26, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

MOTION FOR VOLUNTARY DISMISSAL BY MERCHANTS TRUST AND  
SAVINGS BANK

NOW COMES Merchants Trust & Savings Bank, through its undersigned counsel, and pursuant to Rule 41(a)(1)(i), Federal Rules of Civil Procedure, and without prejudice to the rights of plaintiffs, Bank of New Orleans and Trust Company and Guaranty Bank and Trust Company, hereby dismisses this action in its own half only and without prejudice for the reasons set forth in the affidavit of counsel for the said Bank attached hereto.

EDWARD L. MERRIGAN,  
425 13th Street, N.W.  
Washington 4, D.C.  
*Attorney for Plaintiffs.*

PAUL F. ROGYOM,  
P.O. Box 184, Kenner, Louisiana,  
*Attorney for Merchants Trust and Savings Bank.*

Filed June 26, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

AFFIDAVIT IN SUPPORT OF APPLICATION FOR WITHDRAWAL OR  
DISCONTINUANCE OF SUIT BY PLAINTIFF, MERCHANTS TRUST  
AND SAVINGS BANK.

STATE OF LOUISIANA,  
Parish of Orleans.

Before me, the undersigned Notary Public, personally  
came and appeared:

PAUL F. ROYCO who, being duly sworn, deposes and says:

(1) That I am an attorney at law and I have appeared in this action as counsel on behalf of plaintiff, Merchants Trust & Savings Bank of Kenner, Louisiana. I submit this affidavit in support of the motion to dismiss, withdraw and be dropped as a party plaintiff filed on behalf of said Merchants Trust & Savings Bank of Kenner, Louisiana, (Merchants).

(2) When the complaint in this action was filed on June 9, 1962 I was duly authorized to appear as counsel in that action for the said plaintiff, Merchants Trust & Savings Bank. Said plaintiff then believed, and presently believes, that the allegations contained in the complaint are true and that Merchants will, if the Comptroller of the Currency grants a certificate authorizing the opening of a branch of the Whitney National Bank, suffer damage to its business. However, the Whitney National Bank has injected into this case irrelevant, immaterial and, in some respects, inaccurate statements regarding Merchants which obscure the factual and legal issues presented in this case for determination. Upon reflection, the officers and directors of Merchants for business reasons have concluded that such immaterial assertions concerning Merchants should be eliminated from this suit and desire to accomplish this result by withdraw-

ing as a party plaintiff herein so that the case may proceed on the cause of action set forth on behalf of the remaining plaintiffs.

For the reasons hereinabove stated, it is therefore respectfully prayed that this Court grant the application of plaintiff, Merchants Trust and Savings Bank to withdraw, dismiss and be dropped as a party plaintiff without prejudice to the rights of the remaining plaintiffs and without prejudice to any rights of Merchants.

PAUL F. ROGYOM.

Sworn to and subscribed before me, this 22nd day of June, 1962.

CHARLES A. BYRNE,  
*Notary Public.*

Filed June 27, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

MOTION FOR TEMPORARY RESTRAINING ORDER

Now comes the plaintiffs by their undersigned attorney and move this Court as follows:

To grant forthwith and without notice to the defendant personally a temporary restraining order restraining and enjoining the defendant, his agent and employees from issuing a Certificate of Authority, pursuant to *Title 12 U.S.C. § 27* or otherwise, authorizing the opening and operation of bank facilities in Jefferson Parish, Louisiana to be known as the Whitney National Bank in Jefferson Parish, pending a hearing on and disposition of plaintiffs' Motion for Preliminary Injunction filed herein on June 9, 1962, and scheduled by the Court for hearing on July 6, 1962; and for cause refers to the Complaint herein, the affidavit of Lawrence A. Merrigan, President of plaintiff, Bank of

New Orleans and Trust Company, dated June 26, 1962, together with affidavits of the attorney for plaintiffs, dated June 8 and 27, 1962.

EDWARD L. MERRIGAN,  
*Attorney for Plaintiffs,*  
425 13th Street, N.W.,  
Washington, D. C.

Filed June 27, 1962

CITY OF WASHINGTON,  
District of Columbia, ss:

Edward L. Merrigan, being duly sworn, deposes and says:

I am the attorney for plaintiffs herein. At or about the time I filed the complaint and Motion for Preliminary Injunction herein on June 9, 1962, I advised Mr. Robert Bloom, General Counsel to defendant, the Comptroller of the Currency, and Mr. Haddon of the United States Attorney's Office that I likewise intended immediately to apply for a Temporary Restraining Order to enjoin the defendant Comptroller from issuing the Certificate of Authority in issue in this action until the Motion for Preliminary Injunction could be heard by the Court and determined.

Mr. Bloom, acting for the Comptroller, thereupon committed the defendant as follows: The defendant voluntarily undertook and agreed not to issue any Certificate of Authority authorizing the opening and operation of banking facilities in Jefferson Parish, Louisiana, in the name of Whitney National Bank until this Court had heard and determined the said Motion for Preliminary Injunction. I was assured it would thus be unnecessary for plaintiffs to apply for a Temporary Restraining Order herein.

Acting upon this assurance, plaintiffs did not apply for a Restraining Order.

The Court, on June 26, 1962, upon its own motion and with agreement of the attorneys for plaintiffs and defendant, set down the said Motion for Preliminary Injunction for July 6, 1962 at 10 a.m.

On behalf of plaintiffs, I intend to ask the Court, because of the irreparable damage which otherwise would result, to compel the defendant herein to honor his commitment

to continue to withhold the certificate in issue until the motion for preliminary injunction comes on to be heard on July 6, 1962.

EDWARD L. MERRIGAN.

Sworn to and subscribed before me this 27th day of June, 1962.

[Copy Illegible]  
Notary Public.

My Commission Expires January 31, 1967.

Filed June 27, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

#### TEMPORARY RESTRAINING ORDER

Upon consideration of the Motion for Temporary Restraining Order filed herein on the 27th day of June, 1962, and the Complaint herein filed on the 9th day of June, 1962, the allegations of which were verified by affidavit of Lawrence A. Merrigan, President of plaintiff, Bank of New Orleans and Trust Company, dated June 26, 1962, together with the affidavits of the attorney for plaintiffs, dated June 8 and 27, 1962, it appears to the Court

That the defendant herein, the Comptroller of the Currency, heretofore voluntarily agreed and undertook not to issue any Certificate of Authority, pursuant to *Title 12, U.S.C. § 27*, authorizing the opening and operation of bank facilities in Jefferson Parish, Louisiana to be known as the Whitney National Bank in Jefferson Parish until after this Court had rendered its decision on plaintiffs' Motion for Preliminary Injunction:

That said Motion for Preliminary Injunction was scheduled to be heard by the court on June 27, 1962, but at the suggestion of the Court and by agreement of the attorneys for plaintiffs and defendant herein, the hearing on said motion has been adjourned to July 6, 1962 at 10 o'clock a.m.;



That the defendant herein has advised the Court he is not inclined voluntarily to stay further the issuance of the aforesaid Certificate pending the determination of said Motion for Preliminary Injunction, and that defendant might, if not temporarily restrained, issue his Certificate authorizing the opening and operation of the aforementioned bank facilities in Jefferson Parish, Louisiana before this Court can hear and determine the said Motion for Preliminary Injunction;

That upon issuance of any such Certificate, such bank facilities may be opened and operated forthwith by the applicant for such certificate, and that after the issuance of such certificate, an injunction against the defendant may be of no avail;

That the Complaint herein alleges that the issuance by defendant of his said certificate, authorizing the establishment and operation of bank facilities in Jefferson Parish, Louisiana to be known as Whitney National Bank in Jefferson Parish would constitute a violation of *Title 12 U.S.C. Sections 36 and 1841, et seq.*;

That it appearing from the sworn allegations of the Complaint and the affidavits before the Court that because of the foregoing, plaintiffs will suffer irreparable injury, loss and damage unless a temporary restraining order be granted, as prayed, it is by the Court this 27th day of June, 1962, at 11:05 o'clock a.m.,

ORDERED, that said defendant and his agents and employees be, and he and they are hereby restrained and enjoined from issuing a Certificate of Authority, pursuant to *Title 12 U.S.C. Section 27* or otherwise, authorizing the opening and operation of bank facilities in Jefferson Parish, State of Louisiana to be known as Whitney National Bank in Jefferson Parish, and it is further,

Ordered, that the plaintiffs, or either of them, shall give security in the sum of \$1000.00, conditioned for the payment of such costs and damages as may be incurred or suffered by said defendant if it be found that he shall be wrongfully restrained, and it is further

Ordered, that this restraining order shall expire on the 6th day of July, 1962, unless extended by order of this Court.

/s/ GEORGE L. HART, JR.,

Judge.

District Court of the United States  
for the District of Columbia.

Filed July 7, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

BANK OF NEW ORLEANS & TRUST COMPANY, ET AL., *Plaintiffs,*

*v.s.*

JAMES J. SAXON, *Defendant.*

Washington, D. C.  
June 27, 1962

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Before JUDGE GEORGE L. HART, JR.

Prepared for Clerk's Copy

GEORGE G. DAVIS, JR.  
*Official Reporter,*  
4808 U. S. Court House,  
Washington 1, D. C.,  
STerling 3-5700, Ext. 344.

[3] Mr. Bloom: Your Honor, I am Robert Bloom and I am Acting Chief Counsel to the Comptroller of the Currency.

In addition to the question of the time of the argument of the motion, plaintiffs' motion, we have a question of an administrative stay of the issuance of the certificate for the opening of the Whitney National Bank in Jefferson Parish, which is the issue in this case and which is the action which the plaintiff is seeking to enjoin.

Now, the circumstances under which this administrative and voluntary stay on our part arose were these: About twenty days ago, on June the 8th to be exact, which was a Friday, I received a phone call late in the day from the United States Attorney that Mr. Merrigan was in the building attempting to obtain an ex parte temporary restraining order in connection with a complaint for a declaratory judgment and preliminary and permanent in-

junction which he was getting ready to file on that Friday or the following day.

[4] Now, at that time I knew virtually nothing about the facts of the matter because the case—the administrative proceeding had been handled up to that date by my predecessor, the former Chief Counsel, and other personnel in the office. Mr. Saxon was not in the city and since it was so late on a Friday afternoon, Mr. Hannon, the U. S. Attorney, called and said that if we wished to oppose this TRO, that it would probably have to be done the following morning, Saturday morning, and he wanted to know whether it would be possible in this case for us to voluntarily agree to withhold the issuance of this certificate until the argument on the preliminary injunction could be heard.

I made a telephone call to New Orleans to the Whitney Bank people and I was told that the new bank was not quite ready to open, that the schedule called for it to be opened in ten days to two weeks from that time.

On the basis of that information and not knowing anything about the merits of the case, I agreed with Mr. Merrigan that the Comptroller would withhold the issuance of the certificate for the opening of the Jefferson bank until the argument of the preliminary injunction motion but only on condition that that motion was brought on for argument and argued as promptly as the rules of the Court would permit.

[5] Now, since that time, Mr. Merrigan, in my opinion, has done everything he possibly could to delay the hearing of his own motion. Specifically,—

The Court: Do you understand that he did not request this delay yesterday?

Mr. Bloom: Well,—

Mr. Seaman: Yes, Your Honor, we understand that.

Mr. Bloom: I understand, Your Honor:

Mr. Merrigan: I object to that, I have done everything to delay this thing; it was put on for the first time—

The Court: Wait just a minute, just a minute. I just wanted you to know that they did not ask for a delay.

Mr. Bloom: Well, I understand that, but I also understand that late yesterday afternoon in full similarity to the way the action was commenced, Mr. Merrigan filed a monumental brief of some 50 pages on an issue which is essentially a simple issue of law and which made it virtually impossible for Your Honor to hear the motion this morning.

In addition to that, immediately upon our noticing of this motion for argument, which was done by us, incidentally, and not by Mr. Merrigan, Mr. Merrigan requested that the motion be continued until the Federal Reserve Board had had an opportunity to rule on his motion for a rehearing [6] of the action of the Federal Reserve Board on May 3rd in approving the acquisition of the Whitney Jefferson Bank and the formation of the Whitney holding corporation. I told Mr. Merrigan I thought that that application would await the day in the event of the possibility that the Federal Reserve Board had ruled by the time the motion came on. In fact, the Federal Reserve Board ruled on Monday of this week and denied Mr. Merrigan's petition for a rehearing on the question of the legality of the Whitney holding corporation acquiring the stock of Whitney Jefferson Bank which happens to be the very issue at issue in this case.

Secondly, when the Whitney Bank people requested Mr. Merrigan to consent to their appearance as a defendant in this case—this is the Whitney Bank in Jefferson Parish which is the very bank which the plaintiff is seeking to prevent from opening,—Mr. Merrigan refused to consent to their intervention and put them to the task of making a motion for intervention, and, on top of that, Mr. Merrigan has entered an opposition in that motion.

Thirdly, since Mr. Merrigan has come and bombarded me with requests for inspections of records on threat of issuance of subpoena duces tecum, he has asked to see all the correspondence and records in connection with the three or four applications leading up to this final action in this [7] case. This is in spite of the fact that the issue in this case is an issue of law purely and that in all probability every fact in the case can be stipulated by both sides.

Fourthly, last week after Mr. Merrigan had filed this action and had brought on his motion for preliminary injunction, Mr. Merrigan appeared at the office of an Under-Secretary of the Treasury in the company of a United States Senator, an official of the State of Louisiana, for the purpose of having pressure brought on the Comptroller of the Currency to—disregard—

The Court: Well, I am not interested in that. What I am interested in is why it is so essential that this particular motion be heard today by a Judge without adequate prepa-

ration to hear it rather than hearing it on the 6th of July, at which time the Court will have had proper time to study this matter.

How long did it take you to understand this matter?

Mr. Bloom: Your Honor, the issue in this matter is essentially a simple issue and that is whether the bank, which the Whitney Bank wishes to open in Jefferson Parish, is a branch bank or a—

The Court: Is it a simple issue to an attorney of the Treasury Department or is it a simple issue to a Court of general jurisdiction?

[8] Mr. Bloom: Your Honor, we have no desire at all to rush Your Honor into hearing the motion before he has had a chance to satisfy himself on the reading of the papers submitted, but, in answer to your question as to why it is important that the motion be heard as soon as possible, Judge Hart, I would like to point out that this action, the issuance of this certificate to this bank in Jefferson Parish, is the final ministerial step in a long step transaction and all of the previous steps in this transaction, including the formation of the Whitney holding corporation and the exchange of the stock of the Whitney holding corporation with 1400 stockholders of the Whitney National Bank of New Orleans, has been accomplished. All of the corporate steps leading up to the organization of the new bank in Jefferson Parish have been accomplished, the articles of association have been filed, the certificate of organization has been filed. The bank premises have been purchased. Temporary quarters have been leased across the street. The necessary supplies and personnel are ready to go and actually we have an obligation, we feel, in this case, to the Whitney people, in view of the long administrative road which they have had to travel in this case because, actually, the approval of this matter was granted by the former Comptroller of the Currency, Mr. Gibney, in October of 1961 [9] and since that time it had been common knowledge in New Orleans that the Comptroller had granted his approval subject to the approval of the Federal Reserve Board of the formation of the Whitney holding corporation.

Now, that approval of the Federal Reserve has been forthcoming at the early part of May and the plaintiffs have actually had eight months since the Comptroller indicated his preliminary approval of the matter in October of 1961 to prepare this case, and there is no reason why they should

be coming in at the eleventh hour with a preliminary injunction suit to stop the issuance of a certificate which at this point, after the action of the former Comptroller of the Federal Reserve Board is really an act—a ministerial act on the part of Mr. Saxon. This is the final step to open this bank and the opening of it, the granting of the certificate, will not leave this plaintiff remediless. He has a statutory appeal direct to the Court of Appeals from a decision of the Federal Reserve Board.

In addition to that, he is in court in this case. He has the Comptroller in court and the Whitney Bank people are asking to be the defendants in this case. If at some future time after a full hearing on the merits the Court should find that the—that this bank is actually a branch and not a new independent bank, as we contend, and that the [10] Comptroller did not have legal authority to charter this bank to be owned by the Whitney holding corporation, at that point he would not be remediless because he has asked in his prayer for relief, for declaratory relief.

The Court: Well, counsel, you are arguing the final case on the merits. You still haven't told me why the action of this Court, *sui sponte* in continuing the hearing on the matter from today until the 6th of July, in order that the Court would have an opportunity to study hundreds of pages of briefs and exhibits before deciding the case, should be set aside. Now, why?

Mr. Bloom: Your Honor, I have no objection to the adjournment of the hearing on the motion to July 8—6th—

The Court: Sixth.

Mr. Bloom: —but I must say to Your Honor in all candor, and also to Mr. Merrigan at this point, that in view of Mr. Merrigan's actions, which I believe are calculated, all calculated to delay the action and the hearing of this motion, that I do not feel under any compulsion to delay the issuance of this certificate.

The Court: And I will advise you that unless you agree not to issue the certificate that I will issue a temporary restraining order.

[11] Mr. Bloom: Well, I would certainly request Your Honor, before doing that, to at least give Mr. Monroe, the attorney for the Whitney Bank people, an opportunity to be heard as to the effect of such an order on the situation in Louisiana, which I understand is—has other ramifications.



The Court: Well, I will be very happy to hear you on it but I will not hear it as a preliminary matter. We have many, many people waiting in the court here on previous motions which are short, so if you gentlemen will take a seat back there, I will hear these other motions and then hear you.

Mr. Bloom: All right.

Mr. Merrigan: Thank you.

(Hearing in the aforecaptioned cause was temporarily suspended while other motions on the Court's calendar were disposed of. Thereupon, motion in the aforecaptioned cause continued as follows:)

The Deputy Clerk: Bank of New Orleans and Trust Company vs. Saxon.

The Court: I believe the gentleman from New Orleans wished to say something.

Mr. Merrigan: May it please the Court, just for the record and contrary to what counsel stated, I have made [12] what I consider to be a very substantial opposition to the motion to intervene. Mr. Monroe represents a party not before the Court at this time and I have no objection to the Court hearing what he would like to say with the understanding that he is not yet a party.

Our position, Your Honor, is that the real party in interest here is the Whitney National Bank of New Orleans and they are seeking to intervene through the bank that's been established or proposed to be established.

The Court: If this is an informal hearing, I will hear anybody.

Mr. Merrigan: All right, Your Honor.

Mr. Monroe: Your Honor, my name is Malcolm Monroe from New Orleans. I am attorney for the Whitney National Bank of New Orleans, Whitney holding corporation, Whitney Bank in Jefferson Parish. There is no attempt to hide that particular fact.

We feel we are the real party in interest. This is a suit to keep the Whitney Bank in Jefferson Parish, a brand new corporation which is already organized, has held its organization meetings, has its money deposited, has been completed for over a month, and is ready to do business and has so advised the Comptroller. The only thing remaining for it to do business is certificate to issue for its

[13] commencement of business which is the last step in a long procedure.

The Court: When had you planned to open and commence business?

Mr. Monroe: About a week and a half ago. Let me explain what the issue is in this case, Judge. We have a legislature that is in session now. Let me say, first, that we have been under a stay, a consent stay that was obtained under the circumstances that have been outlined to you. We are under a temporary restraining order and they are urging you now, just like the Delaware Court said, to extend the hearing on motion for preliminary injunction. It is, in our opinion, simply the ground that the plaintiffs are after in this suit. All they are asking you to do is hold us up and I will explain to you exactly why.

The great allegation of facts, we do not deny that we are a separate corporation and that we are part of a holding company system. All of the allegations of the plaintiff have already been made before the Comptroller the past year. There is no allegation, again, that hasn't been made before the Federal Reserve. There is no allegation that wasn't made before Congress. Each one of those different agencies have refused to accept those allegations.

These plaintiffs are now before the Fed., where [14] their relief is. They propose to appeal from that. They are asking this Court to interject itself into the administrative and legal and appeal remedies that are set up in the Federal Act and they are asking to do that in order that they will affect that case but principally these plaintiffs are here asking this to be delayed because these plaintiffs are urging the Louisiana Legislature, which is now in session, these plaintiffs have a bill before the legislature now in session, it is now considering it. My information is it is considering today, a bill not only affecting holding companies in the State of Louisiana, but they have introduced an amendment in a normally standard bill which would apply retroactively to the Whitney Bank in Jefferson Parish so that it would keep it from opening its doors for business, even though it was legally qualified to do so. That is the issue before this Court. Whether they can persuade a Court a thousand miles away from the scene of this real battle, which is now a political battle, to hold up proceedings that have been going on for a year

and a half of which they have had full notice, for a year and a half, since last October, the proceedings have been going on for a year and a half. They have had full notice since last October. They have not exercised their rights up to this eleventh hour.

We point out that under the rules of this Court we [15] are under a temporary restraining order and for an extension of that, which this is the equivalent of, it ought to be awfully good grounds if we are being hurt.

The Court: Well, here is the—again, I think you all miss the point. They did not request the extension. They haven't asked for an extension. This matter came in to the Court yesterday, together with a number of other motions which this Court had to prepare, also on the same day a request from a Senate Committee that the Court appear there tomorrow morning and testify in regard to a pending bill which the Court feels necessary to do some studying on before it goes up there, and when I got to this file yesterday afternoon, it occurred to me that the matter was so complex and there was such a number of exhibits and so many papers in it that I couldn't possibly read it and be ready to hear this motion and intelligently decide it today. Therefore, at my own suggestion, I tried to get the first date next week that was available for a motion of this length because I am sure it is going to take quite a while to argue and I set it down for the 6th to be heard, which would give the Court the time to examine into this thing and have some knowledge of what it is about before it tries to decide it.

Mr. Monroe: Well, Your Honor, we are not for a moment suggesting that you decide the complicated issues that [16] are here. The suit is for a declaratory judgment and the suit is for a stay, from a temporary to a permanent stay. Now we are saying that the only thing that we are complaining of—we are perfectly willing to stay in court and give the Court all the opportunity in the world to consider the real issues in this case, and if the Court finally concludes that what we are doing is illegal, the Court has jurisdiction over us and can stop us, but there is no—we are going to be damaged severely if the Court exercises the exemplary remedy of issuing an injunction. There is no reason why this can't be set up on the merits and that—

The Court: Well, now you are talking about a preliminary restraining order.

Mr. Monroe: That's right.

The Court: Which would be heard next Friday. Also your motion to intervene, which wasn't ready for hearing today, it will also be set down for next Friday and both motions will be disposed of at one time. The granting of a preliminary restraining order in this case, or not, is going to be a very serious matter for all concerned, and it is a matter, certainly, that should not be entered into lightly.

Mr. Monroe: Well, Your Honor, we don't believe it has a great deal of bearing whether they get the restraining order, only a bearing on whether it holds us up with relation [17] to the Louisiana Legislature which is now in session and with relation to the Federal appeal procedures, we feel that the effect of delaying this is having its relationship to the Court that they are normally in, that they have injected this Court into another proceeding and they are asking this Court to interfere with the procedures in there where they are entitled and have already appeared and were denied, and in the record is the Federal ruling denying them a rehearing. They have had plenty of opportunity to go that route and what we are saying to Your Honor—

The Court: Well, are you going to be greatly prejudiced if this matter is put off until next Friday?

Mr. Monroe: We cannot answer, we cannot anticipate the Louisiana Legislature, Your Honor.

The Court: Well heavens knows I can't.

Mr. Merrigan: Well, I think counsel might—

The Court: I don't quite understand what the Louisiana Legislature business is all about.

Mr. Monroe: Because the position of the plaintiff inevitably depends—his whole position depends on what the Louisiana law is. These plaintiffs are trying to change Louisiana law.

The Court: Well, how could what I do here have anything to do with what the Louisiana Legislature does?

[18] Mr. Monroe: The legislature is passing a statute—has before it a statute—not passing it—we trust they won't pass it—but has before it a statute which says that if the bank in Jefferson Parish has not opened its doors for business, it cannot thereafter open.

The Court: Oh, I thought it was retroactive so that even if you did open you would have to close.

Mr. Monroe: I don't think they'd go that far and if they did, we would certainly be delighted to take that on as a legal argument, but we do not want, just because this Court is delayed by lengthy proceedings, to be additionally prejudiced by being faced with the argument that you were not open, the reason you didn't open was the Court up here kept you from opening while it had an opportunity to consider the papers, which is perfectly reasonable. I understand that. Don't mistake me but just saying we are being put in a very, very awkward position if they pass that statute which says you were not open, the statute says if you haven't opened, you can't open and therefore it's a constitutional statute. Now, if we are open and the statute says you've got to close, then we are in a different position.

We, for a year, have been operating under present Louisiana law. We are now faced with not being able to operate under present Louisiana law because of the proceedings [19] in this Court.

We don't believe that this Court should exercise its discretion on the basis of these pleadings to issue the harsh relief particularly when we say to this Court that they cannot be prejudiced: They cannot possibly be prejudiced. We will agree with this Court that when it hears the case and if the declaratory judgment in this case is against us, we will agree that we will have to abide by that declaratory judgment when it becomes final after appeal, and so forth but we will not urge—the only ground they can have for a preliminary injunction is that they would be prejudiced if it was not issued.

I submit they have not stated that they can possibly be prejudiced and we will, and we believe the burden is on them to show that they will be prejudiced. We have put in our brief that we will stipulate with this Court that we are before you and—

The Court: Well, they have got to show irreparable injury.

Mr. Monroe: I don't think they have, Your Honor.

The Court: Well, and I don't know.

Mr. Monroe: Well, we are in a difficult position. We have been up here since—we have been up here since a week ago

Monday asking to get into this case and in every way [20] we have been objected to. The objection that was finally filed was filed on Tuesday, which I understand was seven full days after we filed our motion to get in.

The Court: Well, let me see something else. Mrs. Davis, could this possibly be heard on the second?

The Deputy Clerk: No, Your Honor, Judge Holtzoff won't even be here.

(The Court conferred with the Deputy Clerk.)

Mr. Merrigan: Your Honor, may I be heard? It is an informal proceeding but the wisdom of not hearing parties not a party to the case yet and bringing in a lot of issues which really cloud the issues, the real facts of the case between the plaintiff and the official of the United States Government have been very amply demonstrated here. I am always impressed with the wisdom of the law which prevents these things until the party is actually in the case, and, certainly, from what has been said here today would certainly indicate that that is a very wise thing, and I have been accused of some influences here today that honestly I never understood as a young lawyer I could possibly have and I'd like to put our position before the Court at this point, if we possibly could.

The Court: Well, I am going to let you put your position before the Court. Just take it easy and be patient.

[21] Mr. Merrigan: All right, Your Honor, thank you.

The Court: Do you have anything further to say?

Mr. Monroe: I don't think so, Your Honor. We hope that you can set the thing, if you cannot pass on it today, as soon as possible, and I just want to say again that I don't think it can be any irreparable injury if we agree to stay before the Court and we do that, but we want to open business for reasons that I have outlined.

The Court: All right. Now what have you all got to say?

Mr. Merrigan: Your Honor, first of all, we are faced with this situation. We have Mr. Monroe representing a party who is not before the Court, saying that he will consent to be bound by anything the Court might do after a trial on the declaratory judgment complaint. I haven't heard that statement from the Comptroller of the Currency, who is our defendant here.

The Court: Well, they don't have to say it. There is



no question about the fact that they are going to be bound by any declaratory judgment the Court issues.

Mr. Merrigan: There has been a long series of cases over the years which say that once a certificate issues from the Comptroller of the Currency no one but the Comptroller, himself, can attack it and that would be true of this case. [22] I don't think anyone can deny it.

The Court: Well, that, then, would mean that we wouldn't issue the declaratory judgment.

Mr. Merrigan: I hope that is what it means because in the first page of the Comptroller's points and authorities on this motion, which was before the Court today, he said plaintiffs have received assurance from the Comptroller's office that no certificate of authority will be issued in this matter until after the Court acts on the pending motion and then he goes on, because of this assurance, no temporary restraining order has been sought.

The facts are that when I was going to come down here to obtain a temporary restraining order, I called Miss Hummer and told her that I intended to come in on Friday afternoon or early Saturday, that I had just completed preparations of the complaint and supporting papers. I received a telephone call from Mr. Hannon in the United States Attorney's office and he said, "Can't we get a voluntary arrangement here whereby the certificate you seek will be held in abeyance until the motion for preliminary injunction is heard and determined?"

I said I would have no objection to that provided the Comptroller of the Currency would agree. Mr. Hannon called from the United States Attorney's office to Mr. Bloom, [23] who is General Counsel to the Comptroller, and without any request on my part basically, they agreed that they would hold the certificate of authority in this matter in their office and not issue it until the Court acted on the motion for preliminary injunction.

Number two: I am accused of going to the Under-Secretary of the Treasury with a Senator. Let me just say, Your Honor, that I called Mr. Bloom and I said, could my people come up from New Orleans and talk to you about this situation. They have had no opportunity to present their side of the case. There are no hearings—

The Court: You don't have to defend yourself against

any accusations of that sort made because I have forgotten them already.

Mr. Merrigan: Well, I hope so, Your Honor, because the fact is that I didn't even ask for such a conference until the—I was advised by Mr. Bloom that we could talk as long as we wanted, we would be wasting our time, the Comptroller had made up his mind and that was that.

I don't want Your Honor to think that we have been in here litigating for a year, as has been indicated here today. The first step that these plaintiffs have taken in these proceedings was when we filed a complaint here. There was no formal statutory hearing before the Federal Reserve [24] Board because the Comptroller told the Board that he consented to the Whitney situation.

The Court: Well, now again, this motion is being argued on its merits and that is not what I am considering. I think, gentlemen, here is the situation:-

If this Court tried to hear this motion today, the only thing I could do would be to take it under advisement and study the file and make a decision. I would then have to hear the argument without being able to ask intelligent questions of counsel which might clear up some points, because I would not be familiar with the file. There are Judges who hear motions without reading the file. I am not one of them. Maybe they are a lot smarter than I am. I am not smart enough to do that and particularly in a case this complex. So, if I heard it today you still wouldn't get a decision before next Friday.

Under the circumstances, I regret, gentlemen, but I know nothing else to do but to leave this matter set for hearing on a preliminary injunction and the motion to intervene, next Friday. If the Treasury Department, the Comptroller, will not agree to withhold the issuance of the certificate until that time, then I will today sign a temporary restraining order.

Now, I am sorry but that is all the choice we have [25] in the matter. Now, would you rather I issue a temporary restraining order or would you rather agree to withhold it until next Friday?

Mr. Bloom: Well, Your Honor, I see no point in putting counsel and yourself to the trouble of drawing a paper if I don't have to.

Mr. Merrigan: Papers are drawn.

The Court: Well, it is no problem.

Mr. Bloom: Well, if the papers are drawn, I don't know, you see, because this voluntary situation puts me in a—the Comptroller in a difficult situation.

The Court: Well, if you don't want to be in the voluntary situation, I will relieve you of it.

Mr. Merrigan: May I file the motion for a temporary restraining order with the supporting affidavit?

The Court: Well, let's see what counsel wishes to do. Would you prefer that you not be requested to do it voluntarily but that the Court issue the temporary restraining order?

Mr. Bloom: I think it would be better if the order was issued.

The Court: All right, then let me have the order.

(Mr. Merrigan handed the order to the Court.)

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Filed June 29, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

DEFENDANT'S RESPONSE TO MOTION OF THE BANK OF  
LOUISIANA IN NEW ORLEANS TO INTERVENE AS A PLAINTIFF

Comes now the defendant Comptroller of the Currency, through his undersigned counsel, and states to the Court that he has no objection to the granting of the motion of the Bank of Louisiana in New Orleans to intervene as a plaintiff in this action.

Said defendant however, reserves the right to make all objections he may have to the granting of relief to any plaintiff herein, including the Bank of Louisiana in New Orleans, at any stage in this litigation, including specifically the right to object to the standing of any plaintiff to sue.

JOSEPH D. GUILFOYLE  
*Acting Assistant Attorney General.*

DONALD B. MACGUINEAS,  
DAVID V. SEAMAN,  
*Attorneys, Department of Justice*  
*Attorneys for Defendant.*

*Of Counsel:*

DAVID C. ACHESON,  
*United States Attorney.*

Filed June 29, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

DEFENDANT'S RESPONSE TO MOTION FOR VOLUNTARY DISMISSAL  
BY MERCHANTS TRUST AND SAVINGS BANK

Comes now the defendant Comptroller of the Currency, through his undersigned counsel, and states to the Court that he has no objection to the granting of the motion for voluntary dismissal by plaintiff Merchants Trust and Savings Bank in this action.

JOSEPH D. GUILFOYLE  
*Acting Assistant Attorney General.*

DONALD B. MACGUINEAS,  
DAVID V. SEAMAN,  
*Attorneys, Department of Justice*  
*Attorneys for Defendant.*

*Of Counsel:*

DAVID C. ACHESON,  
*United States Attorney.*

Filed July 5, 1962

STATE OF LOUISIANA,  
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared:

LEON M. TRICE a person of the full age of majority and a resident of the Parish of Orleans, State of Louisiana, who after being by me, Notary, first duly sworn, did depose and say:

That he is a commercial photographer and has been engaged in business in the City of New Orleans as a commercial photographer for forty years.

That on July 3, 1962 at approximately 12:30 P. M. he personally made the six (6) photographs attached hereto, signed on the reverse thereof by him and marked FB 659-1 through 6, inclusive; that these photographs were taken at or in the vicinity of the intersection of Jefferson Highway and Central Avenue, Jefferson Parish, Louisiana; that Photograph No. FB 659-4 is a true and accurate photograph taken on the date aforesaid of the premises bearing Municipal No. 4407 Jefferson Highway, Jefferson Parish, Louisiana; Photograph No. FB 659-3 is a true and accurate photograph taken on the date aforesaid of the premises 4407 Jefferson Highway, showing the property adjacent to 4407 Jefferson Highway, and depicts all of the property from the intersection to approximately 200 feet therefrom on the North side of Jefferson Highway; Photograph No. FB 659-1 is a true and accurate photograph taken on the date aforesaid of the premises directly across Jefferson Highway from and opposite to the premises 4407 Jefferson Highway; Photograph FB 659-2 is a true and accurate photograph taken on the date aforesaid of the area from the intersection of Jefferson Highway and Central Avenue and depicts all of the property from the intersection to approximately 400 feet therefrom on the South side of Jefferson Highway and is that side of Jefferson Highway opposite from the premises 4407 Jefferson Highway; Photograph FB 659-6 is a true and accurate photograph taken on the date aforesaid of the area directly opposite from the premises 4407 Jefferson Highway and across said highway.

LEON M. TRICE.

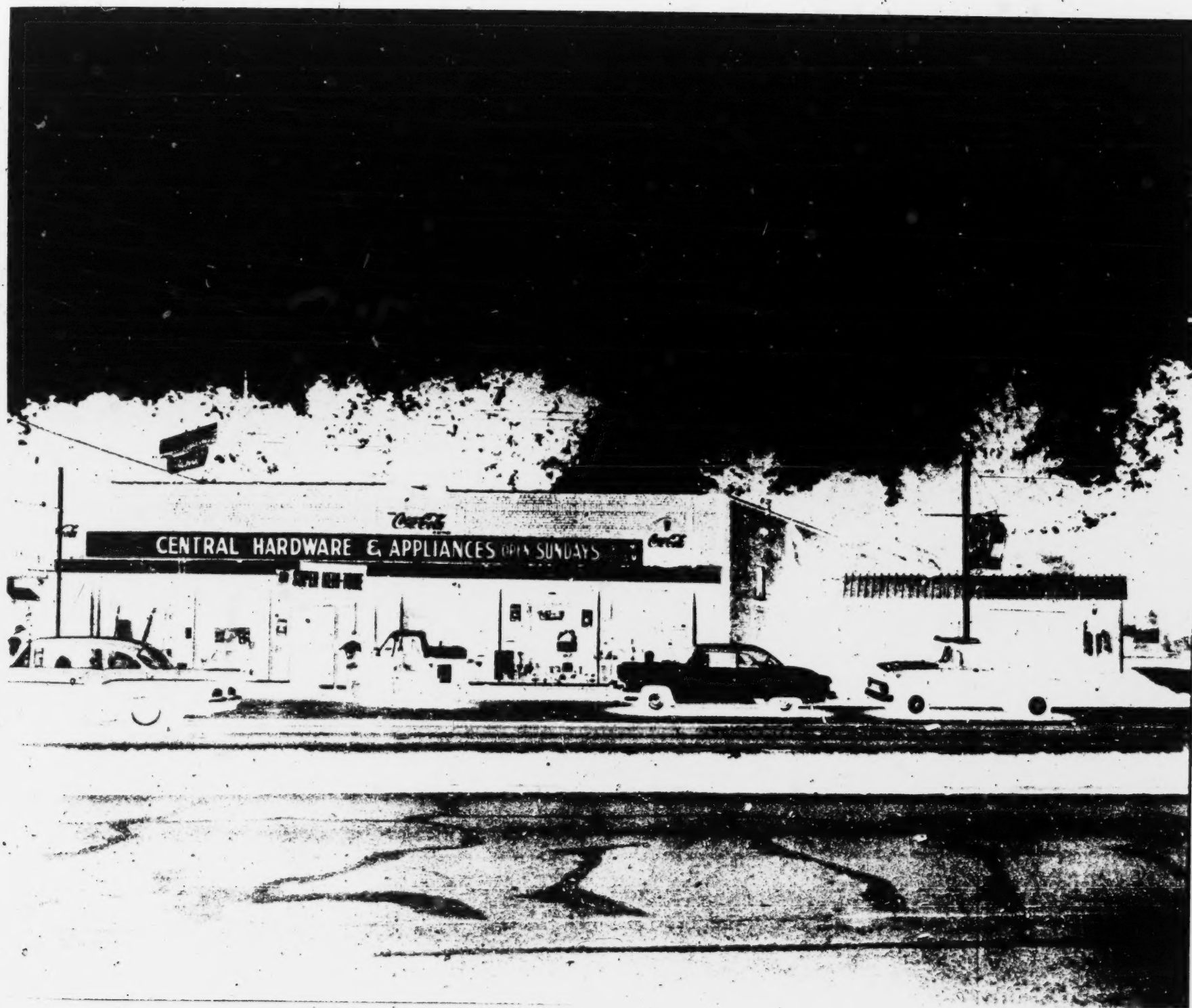
Sworn to and subscribed before me this 3rd day of July, 1962.

[Copy Illegible],  
Notary Public



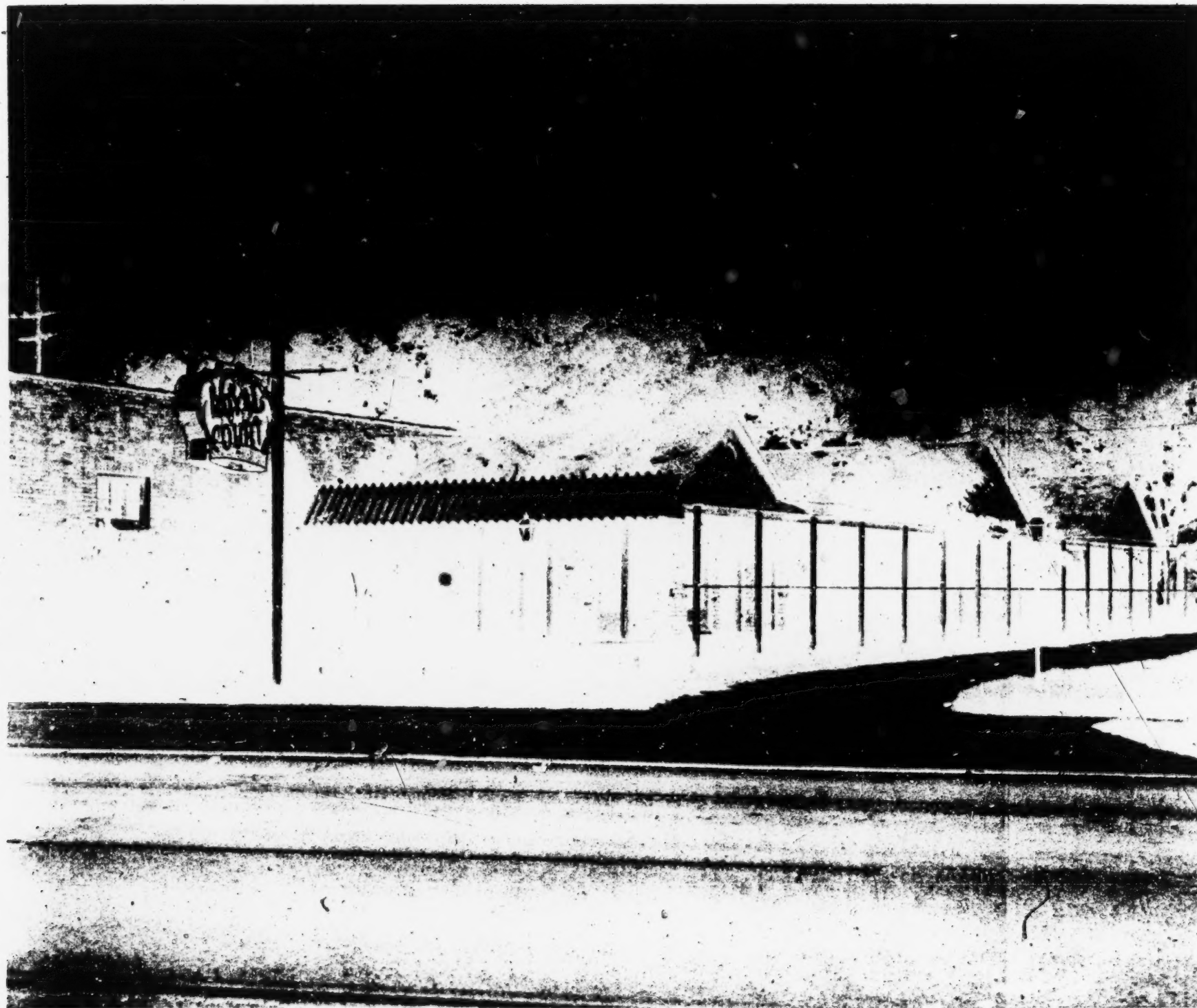














Filed July 5, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

AFFIDAVIT IN SUPPORT OF PLAINTIFF, BANK OF NEW ORLEANS  
AND TRUST COMPANY

STATE OF LOUISIANA,  
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared:

JACQUES A. LIXAUDAIS, a person of the full age of majority and a resident of the Parish of Orleans, who after being by me, Notary, first duly sworn, did depose and say:

That he is the Executive Vice President of the plaintiff, the Bank of New Orleans and Trust Company, and he submits this affidavit in support of the pending motion for preliminary injunction in the above entitled cause:

That he understands that it has been asserted in this action that plaintiff, the Bank of New Orleans and Trust Company, would suffer no damage to its business, its properties or its profits if the defendant, Comptroller of the Currency, issued a certificate to the Whitney National Bank of New Orleans to establish banking facilities in Jefferson Parish, Louisiana. Affiant states that such assertions are untrue and incorrect for the following reasons:

Plaintiff, the Bank of New Orleans and Trust Company, maintains its principal offices and banking branches entirely within the Parish of Orleans, State of Louisiana, and is restricted by State law from establishing banking facilities in Jefferson Parish or any other Parish in the State of Louisiana. Notwithstanding the fact that this plaintiff's banking facilities are limited to the Parish of Orleans, a very large number of the plaintiff's customers, depositors and borrowers reside in and are principally located in



Jefferson Parish, Louisiana. Affiant has reviewed the ledgers of the Bank of New Orleans and Trust Company and:

1. As of June 21, 1962 the total amount of checking accounts of depositors who reside in or whose businesses are located in Jefferson Parish amounted to approximately \$2,029,000.00, and represented deposits by 2812 individuals and businesses and accounted for approximately 12.3% of the total checking account deposits of customers on that date. In addition to checking accounts the Bank serves a very large number of individuals and businesses who reside in or are located in Jefferson Parish and who maintain saving and other type deposits with it.

2. As of June 2, 1962 the total amount of commercial loans to persons residing in or businesses located in Jefferson Parish exceeding \$10,000.00 amounted to approximately \$3,410,000.00 and accounted for approximately 15% of the total amount of commercial loans exceeding \$10,000.00 of all customers of the Bank on that date. The foregoing figures are limited to commercial loans exceeding \$10,000.00. In addition thereto the Bank has outstanding a large volume of commercial loans to persons residing in or businesses located in Jefferson Parish in amounts less than \$10,000.00 as well as loans of all other types.

In fact a substantial number of the largest depositors and borrowers of the Bank are residents of and are businesses located in Jefferson Parish.

Accordingly, should the Comptroller of the Currency authorize the Whitney National Bank of New Orleans, the largest bank in the State, with combined resources of almost one-half billion dollars, to open branch banking facilities through one device or another in Jefferson Parish, plaintiff would necessarily suffer severe loss of loans, deposits and other business and would sustain damage to its business and profits exceeding \$50,000.00 per year. Additionally, if the Comptroller is permitted to issue the certificate of authority, as he proposes to do unless enjoined, this plaintiff would have no adequate remedy at law and would be unable to defend itself against the diversification

and appropriation by said Whitney National Bank of a substantial part of the banking business and services now enjoyed by the Bank of New Orleans and Trust Company.

JACQUES A. LIVAUDAIS.

Sworn to and subscribed before me on this 3rd day of July, 1962.

[Copy Illegible],  
Notary Public

Filed July 5, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

ORDER GRANTING MOTION OF THE BANK OF LOUISIANA IN  
NEW ORLEANS TO INTERVENE AS A PLAINTIFF

Upon consideration of the Motion of The Bank of Louisiana in New Orleans for leave to intervene as a plaintiff in this action and to join with the other plaintiffs herein, in seeking the relief prayed for in the Complaint herein, and the defendant having advised the Court by written response to the motion that he has no objection to the granting of said motion, it is by the Court this 5th day of July, 1962

Ordered, that the said motion of The Bank of Louisiana in New Orleans for leave to intervene as a plaintiff in this action and to join with the other plaintiffs herein in seeking the relief prayed for in the Complaint herein be and the same hereby is granted, and The Bank of Louisiana in New Orleans be and the same hereby is admitted by the Court as a party plaintiff to this action.

[Copy illegible],

Judge,  
United States District Court  
for the District of Columbia.

Filed July 5, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY  
INJUNCTION

CITY OF WASHINGTON,

District of Columbia, ss:

Edward L. Merrigan, being duly sworn, deposes and says:

I am the attorney for plaintiff's herein.

Filed herewith is a copy of House Bill No. 1221 of the 1962 Louisiana Legislature, "To prohibit the formation of new bank holding companies and to control expansion of existing bank holding companies and of their subsidiaries."

This Bill was passed by the Louisiana House of Representatives, with the amendments shown, on June 27, 1962, by a vote of 80 to 16. It was, I am advised, passed without change of the House version, by the Louisiana Senate on July 4, 1962 by a vote of 28 to 7. I am advised that the legislation was supported by the Administration of the State of Louisiana and by the State Banking Commissioner of Louisiana, and is expected to be signed into law by the Governor without substantial delay.

EDWARD L. MERRIGAN.

Sworn to and subscribed before me this 5th day of July, 1962.

[Illegible]

*Natura Publica*

My Commission Expires May 15, 1966

1 HOUSE BILL NO. 1221...

2 By Mr. Angelle. (By Request)

3 AN ACT

4 To define the bank holding company, to prohibit the forma-  
5 tion of new bank holding companies, and to control the  
6 future expansion of existing bank holding companies and  
7 of their subsidiaries.

8 Be it enacted by the Legislature of Louisiana: ~~SECTION 1. DECLARATION OF POLICY.~~ Section 1. Declaration of Policy.

9 It is declared to be the policy of this State to protect  
10 and to foster the growth of the independent unit bank, and  
11 institution whose ownership and origins are grounded in the  
12 local community and whose activities are bound up with  
13 local economic and social organizations; to prevent the un-  
14 desirable concentration of control in the banking field to the  
15 detriment of the public interest; to insure effective competi-  
16 tion among all banking institutions; and, to accomplish these  
17 objectives by prohibiting the formation of new banking  
18 holding companies and the acquisition of control by what-  
19 ever means of additional banking institutions by existing  
20 bank holding companies and by their subsidiaries.

Section 2. Definitions.

21 ~~SECTION 2. DEFINITIONS.~~ foreign or domestic,  
22 (a) "Bank holding company" means any company, in-  
23 cluding a bank, (1) which directly or indirectly owns, con-  
24 trols, or holds with power to vote, <sup>25</sup> ~~IX~~ per centum or more  
25 of the voting shares of any bank or (2) which

9 The State Bank Commissioner shall administer and carry  
10 out the provisions of this Act and may issue such regulations  
11 and orders as may be necessary to discharge this duty and  
12 to prevent evasions of the Act.

Section 6. Savings Clause.

13 ~~SECTION 6. SAVINGS CLAUSE.~~  
14 Nothing herein contained shall be interpreted or con-  
15 strued as approving any act, action, or conduct which  
16 is or has been or may be in violation of any existing law,  
17 nor shall anything herein contained constitute a defense  
18 to any action, suit or proceeding pending or hereafter in-  
19 stituted on account of any prohibited antitrust or mono-  
20 polistic act, action, or conduct.

Section 7. Severability.

21 ~~SECTION 7. SEVERABILITY.~~  
22 If any provision of this Act or the application of such  
23 provision to any person or circumstance, shall be held in-  
24 valid, the remainder of the Act, and the application of  
25 such provision to persons or circumstances other than those  
26 to which it is held invalid, shall not be affected thereby.

Section 8. Repeal.

All laws or parts of laws in conflict herewith  
are hereby repealed.

10 and to foster the growth of the independent unit bank, and  
11 institution whose ownership and origins are grounded in the  
12 local community and whose activities are bound up with  
13 local economic and social organizations; to prevent the un-  
14 desirable concentration of control in the banking field to the  
15 detriment of the public interest; to insure effective competi-  
16 tion among all banking institutions; and, to accomplish these  
17 objectives by prohibiting the formation of new banking  
18 holding companies and the acquisition of control by what-  
19 ever means of additional banking institutions by existing  
20 bank holding companies and by their subsidiaries.

Section 2. Definitions.

21 ~~SECTION 2. DEFINITIONS.~~

22 (a) "Bank holding company" means any company, foreign or  
23 including a bank, (1) which directly or indirectly owns, con-  
24 trols, or holds with power to vote, <sup>25</sup> ~~IX~~ per centum or more  
25 of the voting shares of any bank, or (2) which controls in  
26 any manner the election of a majority of the directors of  
27 any bank, or (3) for the benefit of whose shareholders or  
28 members <sup>25</sup> ~~IX~~ per centum or more of the voting shares of  
29 any bank or a bank holding company is held by trustees;  
30 and for the purposes of this Act, any successor to any such  
31 company shall be deemed to be a bank holding company  
32 from the date as of which such predecessor company became





8 solicitation shall be a bank holding company by virtue of  
9 its control of voting rights of shares acquired in the course  
10 of such solicitation, nor shall this act apply to shares

[illegible]

(d) "Subsidiary," with respect to a specified bank holding company, means (1) any company <sup>25</sup> ~~at~~ per centum or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is owned or controlled by such bank holding company; or (2) any company the election of a majority of whose directors is controlled in any manner by such bank holding

1 company; or (3) any company <sup>25</sup> 15 per centum or more of  
2 whose voting shares are held by trustees for the benefit of  
3 the shareholders or members of such bank holding company.

4 (e) The term "successor" shall include any company which  
5 acquires directly or indirectly from a bank holding company  
6 shares of any bank, when and if the relationship between  
7 such company and the bank holding company is such that  
8 the transaction effects no substantial change in the control  
9 of the bank or beneficial ownership of such shares of such  
10 bank.

11 Section 3. Prohibitions upon Acquisition of B  
~~12 SECTION 2X PROHIBITIONS UPON ACQUISITIONS OF~~  
~~13 BANK SHARES OR ASSETS.~~

13 It shall be unlawful (1) for any action to be taken which  
14 results in a company or a bank becoming a bank holding  
15 company as defined in this Act; (2) for any bank holding  
16 company or subsidiary thereof to acquire direct or indirect  
17 ownership or control of any voting shares of any bank if,  
18 after such acquisition, such company or subsidiary will directly  
19 or indirectly own or control more than <sup>25</sup> 1 per centum of the vot-  
20 ing shares of such bank; (3) for any bank holding company or  
21 subsidiary thereof to acquire all or substantially all of the as-  
22 sets of a bank; or (4) for any bank holding company or sub-  
23 sidiary thereof to merge or consolidate with any other bank

8 the transaction effects no substantial change in the control  
9 of the bank or beneficial ownership of such shares of such  
10 bank.

Section 3. Prohibitions upon Acquisition of Bank Shares or Assets.

~~SECTION 2X PROHIBITIONS UPON ACQUISITIONS OF~~

~~BANK SHARES OR ASSETS.~~

13 It shall be unlawful (1) for any action to be taken which  
14 results in a company or a bank becoming a bank holding  
15 company as defined in this Act; (2) for any bank holding  
16 company or subsidiary thereof to acquire direct or indirect  
17 ownership or control of any voting shares of any bank if,  
18 after such acquisition, such company or subsidiary will directly  
19 or indirectly own or control more than <sup>25</sup> ~~1~~ per centum of the vot-  
20 ing shares of such bank; (3) for any bank holding company or  
21 subsidiary thereof to acquire all or substantially all of the as-  
22 sets of a bank; or (4) for any bank holding company or sub-  
23 sidiary thereof to merge or consolidate with any other bank  
24 holding company or any subsidiary thereof; (5) for any bank holding company or  
25 the foregoing, this prohibition shall not apply to additional  
26 shares acquired by a bank holding company in a bank in which  
27 such bank holding company owned or controlled a majority  
28 of the voting shares prior to such acquisition.

Section 4. Penalties.

~~SECTION 2X PENALTIES.~~

30 Any bank, bank holding company, company, or any subsid-  
31 iary of any of them, which willfully violates any provision  
32 of this Act, or any regulation or order issued by the State

bank holding company or subsidiary thereof to open for business any bank not now opened for business, whether or not, a charter permit, license or certificate to open for business has already been issued.

1 Bank Commissioner pursuant thereto, shall upon conviction  
2 be fined not less than \$500 nor more than \$1,000 for each  
3 day during which the violation continues. Any individual  
4 who willfully participates in a violation of any provision  
5 of this Act shall upon conviction be fined not less than  
6 \$1,000 nor more than \$5,000 or imprisoned not more than  
7 one year, or both.

Section 5. Administration.

8 ~~SECTION 5 ADMINISTRATION~~

9 The State Bank Commissioner shall administer and carry  
10 out the provisions of this Act and may issue such regulations  
11 and orders as may be necessary to discharge this duty and  
12 to prevent evasions of the Act.

Section 6. Savings Clause.

13 ~~SECTION 6 SAVINGS CLAUSE~~

14 Nothing herein contained shall be interpreted or con-  
15 strued as approving any act, action, or conduct which  
16 is or has been or may be in violation of any existing law,  
17 nor shall anything herein contained constitute a defence  
18 to any action, suit or proceeding pending or hereafter in-  
19 stituted on account of any prohibited antitrust or mono-  
20 polistic act, action, or conduct.

Section 7. Severability.

21 ~~SECTION 7 SEVERABILITY~~

22 If any provision of this Act or the application of such  
23 provision to any person or circumstance, shall be held in-  
24 valid, the remainder of the Act, and the application of  
25 such provision to persons or circumstances other than those

Filed July 6, 1962

[Title omitted]

STATE OF LOUISIANA,  
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared:

JOSEPH MERRICK JONES of the full age of majority, who after being first duly sworn did depose and say:

That he is the senior partner in the law firm of Jones, Walker, Waechter, Poitevent, Carrere & Denegre, which firm through its partners and associates is engaged in the practice of law in the City of New Orleans.

That he submits this affidavit because of the improper; misleading and impertinent inferences made by James J. Gilly, Executive Vice-President of the Whitney National Bank of New Orleans, in his "Affidavit in support of Defendant," and the statement contained in Paragraph 7 of the "Third Defense" of the answer of the applicant to intervene, Whitney National Bank of Jefferson Parish, filed in these proceedings entitled "Bank of New Orleans and Trust Company et al vs. James J. Saxon, Comptroller of the Currency," No. 1857-62 of the docket of the United States District Court for the District of Columbia.

That the only client represented by this firm or any of its members in the aforesaid proceedings, either directly or indirectly, is plaintiff, the Bank of New Orleans and Trust Company, on whose behalf, this firm has instituted the aforesaid proceedings solely and exclusively to protect the valuable property rights of said Bank, which would be irreparably damaged if the Whitney National Bank of New Orleans is permitted by the Comptroller of the Currency to establish banking facilities in Jefferson Parish, Louisiana.

This law firm has represented the Bank of New Orleans and Trust Company since its organization in 1946 and has also for many years represented The National Bank of Commerce in New Orleans in many of its legal matters. Affiant advised the National Bank of Commerce in New Orleans of his firm's proposed representation of the Bank

of New Orleans and Trust-Company in this proceeding and was told that said Bank had no objection to his undertaking this representation. Any insinuations by the officials of the Whitney National Bank of New Orleans that the aforesaid law firm is representing the National Bank of Commerce in New Orleans in these proceedings are improper and false.

JOSEPH MERRICK JONES.

Sworn to and Subscribed before me this 3rd day of July, 1962.

JOHN J. WEIGEL,  
*Notary Public.*

Filed July 6, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1857-62

[Title omitted]

ORDER

Upon consideration of the motion for voluntary dismissal by the plaintiff Merchants Trust and Savings Bank, and it appearing that the defendant Comptroller of the Currency has indicated no objection to the granting of this motion, and for good cause shown, it is hereby

Ordered that said motion be and the same hereby is granted and the Merchants Trust and Savings Bank is hereby dismissed as a plaintiff from this action.

Done this 6 day of July, 1962.

ALEXANDER HOLTZOFF,  
*United States District Judge*



Filed July 10, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1857-62

[Title omitted]

ANSWER OF INTERVENING DEFENDANT TO PLAINTIFFS' COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE ORDER

Whitney National Bank in Jefferson Parish, the intervening defendant, answers the plaintiffs' complaint as follows:

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

(1) It is admitted that plaintiff, Bank of New Orleans and Trust Company, is a banking corporation duly organized and existing under and pursuant to the laws of the State of Louisiana and that it maintains its principal office and banking branches entirely within the City of New Orleans, State of Louisiana. The allegations contained in Paragraph I are otherwise denied.

(2) It is admitted that plaintiff, Merchants Trust and Savings Bank, is a banking corporation duly organized and existing under and pursuant to the laws of the State of Louisiana and that it maintains its banking offices and facilities entirely on the East Bank of the Mississippi River in the Parish of Jefferson, State of Louisiana. The allegations contained in Paragraph 2 are otherwise denied.

(3) It is admitted that plaintiff, Guaranty Bank and Trust Company, of Lafayette, Louisiana, is a banking corporation organized and existing under and pursuant to the laws of the State of Louisiana and maintains its banking offices and facilities in Lafayette Parish, State of Louisiana. The allegations contained in Paragraph 3 are otherwise denied.

(4) The allegations contained in Paragraph 4 are admitted.

(5) The allegations contained in Paragraph 5 are denied,

except to admit the existence of the statutory provisions referred to therein. Intervening defendant specially avers that the matters herein sued upon insofar as they involve the Comptroller of Currency are strictly within an area committed to his sole and uncontrolled discretion and are not subject to judicial review.

(6) It is admitted that plaintiffs are all engaged in the banking business of the State of Louisiana. The allegations contained in Paragraph 6 are otherwise denied. It is specially averred that Section 36 of Title 12 of the United States Code has no application whatsoever to the matters herein sued upon, and that what is actually involved, namely action by the Comptroller of Currency pursuant to Section 27 of said title, is and would be within an area of discretion committed to said office exclusively, and not subject to judicial review.

(7) The allegations of the first sentence of Paragraph 7 are admitted. The allegations of the second sentence deal in relative terms and if called upon to admit or deny the said allegation, intervening defendant denies same for lack of sufficient information to justify a belief. Intervening defendant admits that as of June 30, 1961, it held approximately 39% of the total deposits in all banks in the Parish of Orleans, State of Louisiana, and 44% of all deposits of individuals, partnerships and corporations, but the remaining allegations of the third sentence of the first paragraph of Paragraph 7 are relative terms, and if called upon to admit or deny said allegations, intervening defendant denies same for lack of sufficient information to justify a belief.

(8) The allegations contained in Paragraph 8 are denied, except to admit the existence of Title 12, United States Code Sections 27 and 36, and intervening defendant specially avers that Section 36 has no application whatsoever to the matters herein sued upon. Intervening defendant further avers that insofar as Section 27 may be concerned, any action of the Comptroller of the Currency pursuant thereto is in an area committed to the sole discretion of said officer, and is not subject to judicial review.

(9) Intervening defendant admits the existence of Louisiana Revised Statutes 6:54, 328, which are applicable to banks organized under the laws of the State of Louisiana. Intervening defendant otherwise denies the allegations of Paragraph 9 and avers that said statutory provisions have

no application whatsoever to the matters herein sued upon.

(10) Intervening defendant is informed and believes that the officers of Whitney National Bank of New Orleans have at least some familiarity with the National Banking Act and the laws of Louisiana pertaining to banks, as a general proposition. Intervening defendant is not in a position to admit or otherwise deny the allegation with respect to the Comptroller of the Currency. The allegations contained in Paragraph 10 are otherwise denied.

(11) The allegations contained in Paragraph 11 are denied.

(12) Intervening defendant denies the allegations of Paragraph 12 except to admit that Whitney National Bank of New Orleans, Crescent City National Bank, and Whitney Holding Company participated in a reorganization program, all of the phases of which received the required approvals of the appropriate regulatory authorities. In addition, intervening defendant avers that Crescent City National Bank was properly organized and received due approval of and a certificate of authority to commence business from the Comptroller of Currency, which action on the part of the Comptroller of Currency was in an area committed to the sole discretion of that office, and is not subject to judicial review. Intervening defendant avers also that the matters alleged in Paragraph 12 have no bearing whatsoever on the cause of action herein sued upon.

(13) The allegations of Paragraph 13 are denied, and it is specially averred that Title 12, United States Code, Section 1845 has no relevancy whatsoever to the matters herein sued upon.

(14) The allegations of Paragraph 14 are denied.

(15) The allegations of Paragraph 15 are denied, except to admit that all due approvals were obtained with respect to the organization of Crescent City National Bank, and that the approval of the Comptroller of Currency contemplated some action on the part of the Federal Reserve System, the approval of which body was ultimately obtained.

(16) The allegations of Paragraph 16 are admitted, and intervening defendant specially avers that the Federal Reserve Board gave notice of said application to the public as required by law.

(17) It is admitted that the Comptroller of Currency notified the Federal Reserve System recommending approval of the acquisition by Whitney Holding Company of the stock

of Whitney National Bank of New Orleans and that of the intervening defendant. The remaining allegations of Paragraph 17 are denied, and intervening defendant specially avers that the Board of Governors of the Federal Reserve System did not "forego the holding of a formal, statutory hearing on the application", as is averred by plaintiff, but, to the contrary, held a formal hearing after due legal notice and following press releases, including releases in newspapers of general circulation in the City of New Orleans, all of which were available to plaintiffs and contained the date of the hearing as scheduled and ultimately held on January 17, 1962. The fact of the holding of such hearing was well known to plaintiffs despite their allegations to the contrary, in view of the quotation from the transcript of said hearing as appears in Paragraph 17 of plaintiffs' complaint.

(18) The allegations of the first sentence of Paragraph 18 are denied, except to admit that the Federal Reserve System on May 3, 1962, did issue an order, copy of which is attached hereto as Exhibit A. Intervening defendant specially denies that said approval in any way involved the approval of the establishment of a "new branch in Jefferson Parish, Louisiana".

Intervening defendant denies the remaining allegations of Paragraph 18 for lack of sufficient information to justify a belief.

(19) It is admitted that defendant, The Comptroller of Currency, on May 18, 1962, confirmed his formal approval of the consolidation of Whitney National Bank of New Orleans and Crescent City National Bank, which became effective on May 24, 1962, and that a certificate of authority to do business as a national bank was issued to Crescent City National Bank as of May 24, 1962. The allegations of Paragraph 19 are otherwise denied. Intervening defendant specially avers that it is a duly organized banking institution under the national banking laws, that it has complied with law in all respects, and has been recognized by the Comptroller of Currency and that it is presently awaiting the issuance of a formal certificate of authority from the Comptroller of Currency in order that it might commence business in the Parish of Jefferson, State of Louisiana. Intervening defendant is not itself a branch bank or branch facility, and there is no pending application of intervening defendant or of Whitney National Bank of New Orleans to

establish a branch bank in the Parish of Jefferson, State of Louisiana. Intervening defendant is informed and believes that Whitney Holding Corporation, a corporation duly organized under the laws of the State of Louisiana and subject to regulation under 12 U.S.C. Sections 1841-1848, has no intention of establishing or attempting to establish or of applying for authority to establish a "branch bank" or "branch banking facilities" in the Parish of Jefferson, State of Louisiana, inasmuch as said corporation is not a "bank" or "banking institution".

(20) The allegations contained in Paragraph 20 are denied.

(21) It is admitted that the figures recited in Paragraph 21 are substantially correct. The allegations of said paragraph are otherwise denied.

### Third Defense

(1) All action taken by intervening defendant, Whitney National Bank of New Orleans, Crescent City National Bank, and Whitney Holding Company, in connection with the matters herein sued upon and matters relating thereto has been taken openly and with full disclosure of all relevant facts and without subterfuge of any kind.

(2) The organization of the intervening defendant in no way circumvents, and its commencement of the business of banking in Jefferson Parish, Louisiana, would in no way circumvent the provisions and purposes of the National Banking Act, but are entirely consistent therewith and authorized thereby. The purpose of the organization of the intervening defendant was to furnish Jefferson Parish the additional local banking facilities urgently needed and sought by those residing and doing business in said Parish, as well as to give Whitney Holding Corporation and its stockholders an opportunity to share in the potential growth offered to banks serving said Parish.

(3) The banking facilities to be established by intervening defendant will not in any way or for any purposes constitute a "branch" or "branch facility" of either Whitney National Bank of New Orleans or Whitney Holding Corporation, but intervening defendant is a legal entity separate and distinct from Whitney National Bank of New Orleans and Whitney Holding Corporation.

(4) The issuance to intervening defendant by defendant,

Comptroller of Currency, of a certificate of authority to commence the business of banking will be in accordance with the applicable provisions of the National Bank Act (12 U.S.C. 21-27) and will be within the authority and discretion vested thereby on said defendant.

(5) Plaintiff, Guaranty Bank and Trust Company, is located in and serves a community many miles from the metropolitan area of New Orleans and in no way served by banks in Jefferson Parish.

(6) Plaintiff, Merchants Trust and Savings Bank, operates in Jefferson Parish, but is controlled by Louis J. Roussel who also controls National American Bank in New Orleans, a competitor of Whitney National Bank of New Orleans.

(7) The Bank of New Orleans and Trust Company does not operate in Jefferson Parish at all, and is already faced with competition in Jefferson Parish in the form of plaintiff, Merchants Trust and Savings Bank, as commonly controlled with the National American Bank in New Orleans, and also from National Bank of Commerce in Jefferson Parish, an established affiliate of the National Bank of Commerce in New Orleans. The attorneys appearing in this proceeding on behalf of plaintiff, Bank of New Orleans and Trust Company, are also attorneys for National Bank of Commerce in New Orleans.

(7) In good faith and in compliance with all applicable laws, and with notice to all parties and after public investigation and hearings, intervening defendant has been organized with great effort and great expense. Intervenor's charter has been issued and intervenor is completely legally organized. The following further steps have been taken by intervenor:

- (a) It has elected its directors and officers.
- (b) It has designated a full complement of clerks and tellers ready to commence work.
- (c) It has purchased premises and commenced construction.
- (d) It has leased temporary quarters.
- (e) It has subscribed and paid for Federal Reserve membership stock.
- (f) It has printed many of its forms, checks, stationery and incurred other substantial expenses.
- (g) It has represented to the public that it will be open for business momentarily.



WHEREFORE, intervening defendant prays:

(1) That the court enter a judgment declaring and adjudging that defendant, Comptroller of Currency, is authorized and empowered by the provisions of the National Banking Act (12 U.S.C. 21-27) in his sole discretion to issue to intervening defendant a certificate of authority to commence the business of banking in Jefferson Parish, Louisiana.

(2) That the court deny the prayer of plaintiffs' complaint for a permanent injunction and a preliminary injunction against defendant.

UNITED STATES OF AMERICA

BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE  
SYSTEM

Washington, D. C.

In the Matter of the Application of: WHITNEY HOLDING CORPORATION for approval of its becoming a bank holding company by acquiring the stock of Crescent City National Bank, New Orleans, Louisiana, and Whitney National Bank in Jefferson Parish, Louisiana

ORDER APPROVING APPLICATION UNDER BANK HOLDING  
COMPANY ACT

There has come before the Board of Governors, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 (12 USC 1842) and section 222.4(a)(1) of Federal Reserve Regulation Y (12 CFR 222.4(a)(1)), an application on behalf of Whitney Holding Corporation, New Orleans, Louisiana, for the Board's prior approval of action whereby Whitney Holding Corporation would become a bank holding company by acquiring substantially all of the voting stock of (1) the Crescent City National Bank, New Orleans, Louisiana (a proposed new bank), into which would be consolidated the existing Whitney National Bank of New Orleans, under the latter title, and (2) the Whitney National Bank in Jefferson Parish, Louisiana (a proposed new bank). A Notice of Receipt of Application was published in the Federal Register on July 28, 1961 (26 Federal Register 6792), which provided an oppor-

tunity for submission of comments and views regarding the proposed acquisitions, and the time for filing such comments and views has expired and all comments and views filed with the Board have been considered by it. Pursuant to Order published in the Federal Register on December 23, 1961 (26 Federal Register 12312), a public proceeding with respect to the application was held before the Board on January 17, 1962 to provide a further opportunity for the expression of views and opinions by interested persons.

It is Ordered, for the reasons set forth in the Board's Statement of this date, that said application be and hereby is granted, provided that the acquisitions approved herein shall not be consummated (a) sooner than seven calendar days after the date of this Order or (b) later than three months after said date, and provided further that Whitney National Bank in Jefferson Parish shall be opened for business within six months after said date.

Dated at Washington, D. C., this 3rd day of May, 1962.

By order of the Board of Governors.

Voting for this action: Chairman Martin, and Governors Balderston, Mills, Shepardson, King, and Mitchell.

Voting against this action: Governor Robertson.

MERRITT SHERMAN,  
*Secretary.*

(Seal).

Filed July 10, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

ORDER ALLOWING WHITNEY NATIONAL BANK IN JEFFERSON  
PARISH TO INTERVENE AS A DEFENDANT

The Whitney National Bank in Jefferson Parish having moved the Court for leave to intervene as a defendant in this action, and such motion having come on to be heard on July 6, 1962, and at the hearing counsel for the plaintiffs and for the defendant Comptroller of the Currency having orally consented to the granting of such motion, it is hereby

Ordered that the Whitney National Bank in Jefferson Parish have leave to intervene in this cause and that said bank be and the same hereby is made an additional party defendant herein, and it is

Further Ordered that the Answer of such intervening defendant, presently attached as an exhibit to the motion for intervention, may be filed in the Clerk's office in the same manner and with the same effect as if such intervening defendant had been named as an original party to this cause, and it is

Further Ordered that the caption of this action shall hereafter read as follows:

BANK OF NEW ORLEANS AND TRUST COMPANY, GUARANTY  
BANK AND TRUST COMPANY, *Plaintiffs,*

BANK OF LOUISIANA IN NEW ORLEANS, *Intervening Plaintiff,*

*v.*

JAMES J. SAXON, Comptroller of the Currency, *Defendant,*

WHITNEY NATIONAL BANK IN JEFFERSON PARISH, *Intervening Defendant.*

Done this — day of July, 1962.

/s/ ALEXANDER HOLTZOFF,  
*United States District Judge.*

Filed July 10, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF  
PRELIMINARY INJUNCTION

The motion of plaintiffs for a preliminary injunction having come on for hearing on July 6, 1962, and the Court having considered the Complaint herein, the affidavits filed in support of and in opposition to the motion, the evidence in the form of written exhibits submitted during the aforementioned hearing, and having heard oral argument of

counsel, hereby makes the following findings of fact and conclusions of law:

### Findings of Fact

1. The defendant, James J. Saxon, Comptroller of the Currency proposes to issue, during the pendency of this action and before same can be heard and determined on its merits, a certificate of authority pursuant to 12 U.S.C. § 27 to the intervening defendant herein, Whitney National Bank in Jefferson Parish, which would enable it to open and operate banking facilities in Jefferson Parish, Louisiana.

2. Plaintiffs contend that the issuance of said certificate of authority would be unlawful and contrary to 12 U.S.C. § 36, 1845 and 1846 and Louisiana Revised Statutes, Title 6, Section 54.

3. Plaintiffs contend further that the issuance of said certificate would cause each to sustain irreparable injury and damages to its banking business and properties emanating from said Jefferson Parish, Louisiana and it appears that such injury and damages to plaintiffs may exceed the sum of \$10,000, and that plaintiffs are without any adequate remedy at law.

4. The granting of a preliminary injunction is necessary to preserve the status quo until the merits of the case can be decided.

### Conclusions of Law

1. This Court has jurisdiction over this action under 28 U.S.C. § 1331.

2. Plaintiffs are entitled to a preliminary injunction restraining the defendant Comptroller of the Currency from issuing a certificate of authority to the Whitney National Bank in Jefferson Parish for the opening and operation of banking facilities in Jefferson Parish, Louisiana until this action can be heard and determined on its merits.

Done this 10 day of July, 1962.

/s/ ALEXANDER HOLTZOFF,  
United States District Judge.

Filed July 10, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

PRELIMINARY INJUNCTION

This cause came on to be heard on plaintiffs' motion for a preliminary injunction and the Court having considered the Complaint, the affidavits submitted in support of said motion and in opposition thereto, the exhibits submitted to the Court during the hearing of the motion, and having heard counsel, and, it appearing to the Court after due deliberation that unless a preliminary injunction is granted herein, defendant James J. Saxon, Comptroller of the Currency may, before this action can be determined on its merits, issue a certificate or certificates authorizing defendant Whitney National Bank in Jefferson Parish, or persons or corporations in active concert and participation with said defendant, to open and operate banking facilities in Jefferson Parish, State of Louisiana, to the irreparable injury and damage of the plaintiffs herein, and the Court having made and filed its findings of fact and conclusions of law, it is this 10 day of July, 1962,

Ordered, that defendant James J. Saxon, Comptroller of the Currency, his agents, servants, employees and attorneys, be and they hereby are restrained and enjoined, pending the determination of this action or until further order of this Court, from issuing or delivering any certificate, pursuant to 12 U.S.C. § 27 or otherwise, to defendant Whitney National Bank in Jefferson Parish, or to any person, or corporation in active concert or participation with said Whitney National Bank in Jefferson Parish, authorizing the opening and operation by them or any of them of new branch bank or banking facilities within the limits of Jefferson Parish, State of Louisiana; provided that plaintiffs give security in the sum of \$50,000 for the payment of such costs and damages as may be incurred or

suffered by Whitney National Bank in Jefferson Parish who is found to have been wrongfully enjoined, such bond to be submitted no later than the 17th day of July, 1962.

/s/ ALEXANDER HOLTZOFF,  
*United States District Judge.*

Filed July 11, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

MOTION OF DEFENDANT COMPTROLLER OF THE CURRENCY FOR  
SUMMARY JUDGMENT

Comes now the defendant Comptroller of the Currency, by his undersigned counsel, and moves the Court to enter summary judgment in his favor on the grounds that there is no genuine issue herein as to any material fact and that he is entitled to judgment as a matter of law. Attached in support of this motion are the statement required by Local Civil Rule 9(h) and a memorandum of points and authorities.

In further support of this motion, specific reference is here made to the affidavit of James J. Saxon, filed on June 20, 1962, and to defendant's memoranda filed on June 20, June 26, and July 3, 1962, in opposition to the previous motion for preliminary injunction. General reference is also made to the other papers on file in this action, since a motion for summary judgment searches the entire record before the Court.

/s/ JOSEPH D. GUILFOYLE,  
*Acting Assistant Attorney General.*

/s/ DONALD B. MACGUINEAS,  
/s/ DAVID V. SEAMAN,  
*Attorneys, Department of Justice*  
*Attorneys for Defendant Comptroller*  
*of the Currency.*

*Of Counsel:*

DAVID C. ACHESON,  
*United States Attorney.*



Filed July 11, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

STATEMENT OF DEFENDANT COMPTROLLER OF THE CURRENCY  
PURSUANT TO LOCAL CIVIL RULE 9(h)

The defendant Comptroller of the Currency, pursuant to Local Civil Rule 9(h), submits the following statement of the material facts as to which he contends there is no genuine issue in this case:

1. On October 3, 1961, the Comptroller of the Currency gave preliminary approval to the formation of two new national banks, the Crescent City National Bank and the Whitney National Bank in Jefferson Parish, subject to approval by the Federal Reserve Board of the formation of a holding company for the purpose of acquiring the stock of such banks, pursuant to the Bank Holding Company Act of 1956.

2. On May 3, 1962, the Federal Reserve Board approved the application of Whitney Holding Corporation to become a bank holding company by acquiring the stock of the Crescent City National Bank and the Whitney National Bank in Jefferson Parish.

3. On May 18, 1962, the Comptroller of the Currency approved the consolidation of the existing Whitney National Bank in New Orleans into the Crescent City National Bank under the name Whitney National Bank in New Orleans. This consolidation was accomplished on May 24, 1962.

4. On May 24, 1962, the Whitney Holding Corporation, which had been previously organized under Louisiana law, completed the organization of the Whitney National Bank in Jefferson Parish by purchasing all of its stock (except for directors' qualifying shares) for \$650,000.00. Bylaws were adopted and the directors and officers were elected.

5. The Articles of Association and the Certificate of Organization of the Whitney National Bank in Jefferson

Parish have been executed and filed with the Comptroller of the Currency pursuant to 12 U.S.C. 24, and thereupon the Whitney National Bank in Jefferson Parish became a new national bank and a body corporate.

6. The present suit was filed on July 9, 1962, just as the Comptroller of the Currency was about to issue a Certificate of Authority pursuant to 12 U.S.C. 27, permitting the Whitney National Bank in Jefferson Parish to commence banking operations.

/s/ JOSEPH D. GUILFOYLE,  
*Acting Assistant Attorney General.*

/s/ DONALD B. MACGUINEAS,

/s/ DAVID V. SEAMAN,

*Attorneys, Department of Justice*  
*Attorneys for Defendant Comptroller*  
*of the Currency*

*Of Counsel:*

DAVID C. ACHESON,  
*United States Attorney.*

Filed July 16, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Vol: 1

Prepared for: Court

Date: July 6, 1962

GERALD NEVITT,  
*Official Reporter,*  
U. S. Court House,  
Washington 1, D. C.,  
STerling 3-5700,  
Extension 274.

[1] UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

BANK OF NEW ORLEANS AND TRUST COMPANY, MERCHANTS  
TRUST AND SAVINGS BANK, GUARANTY BANK AND TRUST  
COMPANY, *Plaintiffs*,

*vs.*

JAMES J. SAXON, Comptroller of the Currency, Washington,  
D. C., *Defendant*.

Washington, D. C.  
Friday, July 6, 1962.

The above cause came on for hearing of motions before  
The Honorable Alexander Holtzoff, Judge, United States  
District Court for the District of Columbia.

APPEARANCES:

On behalf of Plaintiff Bank of New Orleans & Trust:  
Edward L. Merrigan, Esq., A. J. Waechter, Esq.

On behalf of Plaintiff Guaranty Bank & Trust: James  
W. Bean, Esq.

On behalf of Intervening Plaintiff Bank of Louisiana  
In New Orleans: G. Harrison Scott, Esq.

[2] On behalf of Defendant James J. Saxon: David V.  
Seaman, Esq., Department of Justice. Robert Bloom,  
Esq., Chief Counsel, Comptroller of the Currency.

On behalf of Intervening Defendant Whitney National  
Bank In Jefferson Parish: Malcolm L. Monroe, Esq.,  
Hamilton Carothers, Esq.

[3] PROCEEDINGS

The Deputy Clerk: Bank of New Orleans vs. Saxon.

Mr. Merrigan: Your Honor, may I introduce to the Court  
some counsel from out of the District of Columbia who  
have appeared here on the motion this morning?

The Court: Very well.

Mr. Merrigan: Of course, I am Mr. Merrigan, repre-  
senting the Bank of New Orleans & Trust Company, one  
of the plaintiffs.

Mr. A. J. Waechter, of the Louisiana Bar, is here to represent the Bank of New Orleans & Trust Company.

Mr. James W. Bean, of Lafayette, Louisiana, is here to represent the Guaranty Bank and Trust Company of Lafayette, Louisiana.

Mr. G. Harrison Scott, of New Orleans, is here to represent another plaintiff, The Bank of Louisiana In New Orleans.

On the other side of the table, Your Honor---

The Court: Just a moment. It is not sufficient to introduce them. You have to move that they be admitted pro hac vice.

Mr. Merrigan: Your Honor, I so move, for the attorneys appearing on behalf of the plaintiffs, and I would like to make the same motion, if I might, for Mr. Malcolm [4] Monroe---

The Court: Yes, but will you also state of what state bar each counsel is a member, so we have a record of that.

Mr. Merrigan: Yes, Your Honor. Mr. Waechter is an attorney of the Louisiana Bar. Mr. Bean is a member of the Bar of the State of Louisiana. Mr. Scott is a member of the Bar of the State of Louisiana. Mr. Malcolm Monroe, representing the proposed intervenor, applicant for intervention, is a member of the Bar of the State of Louisiana.

Mr. Seaman: Your Honor, Mr. Monroe is also a member of the Bar of the District of Columbia.

Mr. Merrigan: I didn't know this, Your Honor.

The Court: Then you do not have to move his admission.

Mr. Merrigan: No, Your Honor.

Mr. Seaman: Your Honor, if I may, I am David Seaman, of the Department of Justice. Before we start, I would like to make a matter of procedure as to these motions.

Your Honor, there are three motions before you, as I understand it, this morning. The motion that is set down first is the motion for preliminary injunction. The second motion is the motion of the Whitney National Bank to intervene as a defendant. That motion has been pending for some time, Your Honor.

[5] The Court: You say motion for preliminary injunction. What is the next motion?

Mr. Seaman: The motion of the Whitney National Bank In Jefferson Parish, Your Honor, to intervene as a defendant. They are the bank, Your Honor, that want the certificate from the Comptroller.

The Court: Just tell me what the motions are, first.

Mr. Seaman: Yes, Your Honor. That is the second. And the third is the motion of one of the plaintiffs to withdraw. That is not opposed, Your Honor, and as far as I know it can be granted immediately.

The Court: A motion to withdraw what?

Mr. Seaman: They are one of the three plaintiffs, Your Honor—

The Court: You say motion to withdraw. Motion to withdraw what?

Mr. Seaman: It is one of three plaintiffs, Your Honor. They want to withdraw as a plaintiff.

The Court: In other words, they want to dismiss the action as to them?

Mr. Seaman: Yes, Your Honor.

The Court: Is there any opposition to that?

Mr. Seaman: None whatsoever, and I have a proposed order, Your Honor.

[6] The Court: Suppose you submit an order to that effect.

I think the motion for leave to intervene should be heard before the motion for an injunction.

Mr. Seaman: Yes, Your Honor, that is our position.

Mr. Merrigan: Your Honor, we will consent to the intervention of the Whitney National Bank in Jefferson Parish, provided, of course—which we have the right to do under the rules—we can move at some later time to add the parent bank, Whitney National Bank of New Orleans. I won't press this on the Court at this time because I think it will become—

The Court: As I understand it from Mr. Seaman's statement, there are two motions before me, two contested motions; is that correct?

Mr. Seaman: Yes, Your Honor.

The Court: One motion for preliminary injunction and the other is a motion for leave to intervene.

Mr. Merrigan: But we withdraw—

The Court: I think it would be appropriate to hear the second motion first, would it not?

Mr. Seaman: Yes, Your Honor.

Mr. Merrigan: Yes, Your Honor, and we are trying to expedite the proceedings because I think the real important matter before the Court is the motion for preliminary injunction.



[7] The Court: Is there any opposition to the motion for leave to intervene?

Mr. Merrigan: We withdraw our opposition to that.

The Court: Is the Government opposing it?

Mr. Seaman: Certainly not, Your Honor.

The Court: Very well, then, that will be granted by consent.

Mr. Monroe: Your Honor, could I point out we endeavored to intervene some time ago and we were vigorously opposed. I just want to point that out.

The Court: That has become an academic question.

Mr. Monroe: I understand, Your Honor.

The Court: Who is the intervention petitioner? Who is the intervenor?

Mr. Seaman: Your Honor, the intervenor is the Whitney National Bank In Jefferson Parish. They are the ones that want the certificate.

The Court: I see. Very well. So, there is just one matter before me to be argued now, the motion for preliminary injunction.

Mr. Seaman: Yes, Your Honor.

The Court: Against the Comptroller of the Currency.

Mr. Seaman: Yes.

The Court: Very well, I will hear the motion.

[8] Mr. Merrigan: Your Honor, this is a motion for preliminary injunction to restrain the Comptroller of the Currency pendente lite from issuing a certificate under the National Banking Act, Title 12 United States Code, for the opening and operation of banking facilities in Jefferson Parish, Louisiana, by either the Whitney National Bank of New Orleans, which is a bank located in the City of New Orleans, Parish of Orleans, or by the so-called Whitney Holding Corporation or by the Whitney National Bank In Jefferson Parish, which has just been admitted to these proceedings by intervention.

The Court: Just a moment. I am afraid you got ahead of me a little bit. The injunction is requested against the Comptroller of the Currency against issuing a certificate to whom?

Mr. Merrigan: To any one of those three banks, the Whitney National Bank of New Orleans, the Whitney Holding Corporation, or the so-called Whitney National Bank In

Jefferson Parish, the party who has just been allowed to intervene.

And, of course, the basis of our opposition against the intervention previously was that the real party in interest was the Whitney National Bank of New Orleans or the Whitney Holding Corporation.

Now, Your Honor, when this matter came on before [9] Judge Hart on June 27th, a temporary restraining order was issued, holding the certificate of the Comptroller in abeyance until today; and, of course, the temporary restraining order expires today and we are here, of course, on the motion for preliminary injunction.

The plaintiffs contend—

The Court: Of course, a temporary restraining order is not an adjudication of any kind. It is issued ex parte and all it is intended to do is to hold matters in status quo for ten days, that is all.

Mr. Merrigan: Well, in this case, Your Honor, that is entirely true; but in this case it was granted on notice and after argument of some kind before the Court.

The Court: That does not make any difference. That is the only effect a temporary restraining order has.

Mr. Merrigan: Entirely correct, Your Honor.

Now, plaintiffs contend, Your Honor, to sharpen the issues here, that under the facts of this case the opening of banking facilities in Jefferson Parish, Louisiana, and the granting of the certificate by the Comptroller are unlawful under the following provisions of law:

First, Section 36 of the National Bank Act, which is Title 12, 36 (c). Under the statutes of Louisiana, Revised Statute 6:54, which was passed by the State of Louisiana [10] in pursuance of Section 36 of the National Bank Act. And I will—

The Court: Now suppose, if you don't mind, you make your references to the United States Code rather than to the constituent statute. We always use the Code because it is not practical to have a copy of every possible statute. You refer to 12 United States Code, section what?

Mr. Merrigan: It is Title 12 United States Code, Section 36.

The Court: You may proceed.

Mr. Merrigan: Section 36 (c) provides that a national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches

beyond the limits of the city in which its main office is located, if such establishment and operation are at that time expressly authorized to state banks by the law of the state in question.

The Court: Where are you reading from? I have the statute here.

Mr. Merrigan: 12 United States Code, Section 36 (c), Your Honor.

The Court: Yes, but it is a very long section, very long sub-section. What part of it were you reading from?

Mr. Merrigan: I am quoting from (c)(1) and (c)(2).

[11] The Court: Yes.

Mr. Merrigan: And that says, of course, Your Honor, that a national bank which has a main office in the City of New Orleans, Parish of Orleans, can open a branch bank beyond the City of New Orleans, Parish of Orleans, only if the laws of the State of Louisiana expressly permit state banks to do the same thing; and the statute as passed by Congress says that the state statute involved must authorize the opening of that branch by language specifically granting such authority affirmatively and not merely by implication or recognition.

The Court: Where are you reading from now?

Mr. Merrigan: (c)(2), Your Honor.

The Court: Yes.

Mr. Merrigan: Now if I could direct Your Honor's attention to Sub-section (f) of Section 36, which is on the next page, that section defines a branch, and it says that a branch as used in this section shall be held to include any branch bank, branch office, branch agency, additional office or any branch place of business located in any state of the United States.

In other words, Your Honor, Congress has left to the states complete control over branch banking under Section 36. They say that a national bank which is chartered into [12] business by the Comptroller of the Currency can open branches only if the state banks chartered by the laws of the various states can do the same thing.

The Court: Now, what does the Comptroller of the Currency propose to do that you seek to have enjoined?

Mr. Merrigan: The Comptroller of the Currency proposes to issue a certificate authorizing the Whitney National Bank of New Orleans, which is the largest bank in the State of Louisiana, larger than all—as large as all the banks com-

bined in the City of New Orleans—to open a branch, we say, in Jefferson Parish, contrary to Section 36 and contrary to the statutes of Louisiana.

The Court: What is your client's interest in the matter, legal interest? Is it just that they want to avoid competition?

Mr. Merrigan: Well, Section 36, Your Honor, was passed by Congress as an antitrust statute, practically. It was to prevent monopoly in banking. It was to prevent branch banking by large banks beyond the limits of a parish.

The Court: I understand, but what legal interest does your client have, other than the interest of any private citizen?

Mr. Merrigan: Well, a very, very—

[13] The Court: Let's assume that a proposed action of the Comptroller of the Currency is illegal. Let's concede that arguendo. An ordinary citizen who has no legal interest in the matter may not maintain an action to enjoin it.

Mr. Merrigan: Absolutely granted.

The Court: Now, then, what is your legal interest? What is your standing to sue?

Mr. Merrigan: We have before the Court three state banks of the State of Louisiana, two of whom have their main offices in the City of New Orleans, Louisiana, Parish of Orleans, and whose customers, to a great degree, running into millions of dollars, are located in Jefferson Parish. By state law those banks cannot open branches beyond the limits of the City of New Orleans; and, yet, the Comptroller is authorizing the largest bank, the largest national bank in the whole state, going over the parish line, opening branch facilities in Jefferson, and thereby endangering all of the property and business interests of these banks.

The Court: You have not answered my question. What legal interest does the plaintiff have to seek an injunction against an alleged illegal act of the Comptroller of the Currency? What is your standing to sue? Is it because you have additional competition, is that it?

Mr. Merrigan: No; that we will have additional [14] competition, Your Honor, but they have millions of dollars of deposits—and this is in affidavit form in conceded facts before the Court—they have millions of dollars of deposits emanating from Jefferson Parish; that is, persons resident in Jefferson Parish, firms located in Jefferson Parish. They have millions of dollars of loans to business firms located

in Jefferson Parish who come to the banks in New Orleans to make these loans and to deposit their funds.

If the Comptroller of the Currency, contrary to Section 36, contrary to the statutes of Louisiana, authorizes the Whitney National Bank, contrary to law, to open branches beyond the Parish of New Orleans, all of these tremendous banking properties of the plaintiffs will be put at the—well, they will lose tremendous amounts of—

The Court: Well, that is what I say. Your interest, in other words, is to eliminate potential additional competition, is it not?

Mr. Merrigan: No; loss of property, Your Honor.

The Court: But you don't lose any property. You lose business to a competitor. Isn't that what this amounts to?

Mr. Merrigan: Well, we have mortgages, the plaintiffs have mortgages on property located in Jefferson Parish.

The Court: Nothing is going to happen to those [15] mortgages as a result of a new bank being established.

Mr. Merrigan: If you lose the account of the borrower, if you lose the account of the depositors from Jefferson Parish, if you lose the vast amount of business that comes from Jefferson Parish, Your Honor—and we say that is the purpose of the National Bank for going there—we suffer net loss of profits, loss of resources in New Orleans.

The Court: It still comes down that you want to avoid additional competition.

It is entirely legitimate to desire to avoid additional competition, but why not say so?

Mr. Merrigan: Well, Your Honor, I want to say that that is true, of course. Naturally it is true. I think that was the purpose of Section 36, that no one would be given an upper hand on the other fellow. And that is why—

The Court: Very well, you may proceed.

Mr. Merrigan: That is why they based it on state statutes.

Now, if Your Honor please, as I pointed out, Section 36 of the National Bank Act says that branching can be done only if state law permits it. And I have here for Your Honor the revised statute, 6:54, of the Louisiana Revised Statutes, which provides that a bank can open a branch only in a parish where there are no other state banks, savings [16] banks and trust companies.

So that all parties on this motion I think concede, and they concede on the face of the briefs—

The Court: Read that Louisiana provision once more.

Mr. Merrigan: It says all banks, savings banks and trust companies having a capital of \$100,000 or more may open and maintain a branch office or branch offices in parishes in which there are no state banks, savings banks and trust companies.

All parties on this motion, including the defendants, including the Government, including the Comptroller, agree that since 1930 or thereabouts it has been unlawful for any national bank or any state bank to open branches beyond its parish line because that would violate Section 36 and it would violate the provision of the Louisiana law.

The Court: Let me see the statute. Do you have the Louisiana statute?

Mr. Merrigan: Yes, we do, Your Honor.

(The document was handed to the Court by Mr. Merrigan.)

The Court: Which section is that?

Mr. Merrigan: Section 54, Your Honor.

The Court: What part of this section do you say would be violated? There are several provisions in this [17] section. This section authorizes banks having a capital of \$100,000 or more to open branch offices in parishes in which there are no state banks, savings banks or loan companies.

Is it your contention that the converse follows by necessary implication, that if there are other state banks in the parish a branch office may not be maintained? Is that your—

Mr. Merrigan: That is correct, Your Honor, and that is conceded by the parties before the Court.

The Court: I see. Very well, proceed. I think I get your point.

Mr. Merrigan: Now, Your Honor, we refer, too, so that Your Honor might have the full picture that is before the Court, we refer, too, to violations of the Federal Bank Holding Company Act, which is found at Title 12, United States Code, 1841 et seq., and particularly, Your Honor, Section 1845 and Section 1846.

Section 1845 provides that after May 9, 1936, it shall be unlawful for a bank to invest any of its funds in the capital stock, bonds, debentures or other obligations of a bank



holding company of which it is a subsidiary or of any other subsidiary of such bank holding company.

Section 1846 of Title 12, entitled Reservation of Rights to States, says the enactment by the Congress of this [18] chapter shall not be construed as preventing any state from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies and subsidiaries thereof.

Now, if it please the Court, Whitney National Bank of New Orleans, which, as I pointed out to the Court, is the largest bank in the State of Louisiana and just about one of the largest in the entire south—it has \$500,000,000 in resources, about \$14,000,000 in undivided profits, about \$27,000,000 in its surplus account, and now holds approximately 45 per cent of all deposits in all banks in the City of New Orleans combined—knew that it could not under any circumstances legally open a branch, as I pointed out before, beyond the limits of the parish or county of Orleans in Jefferson Parish.

The facts before the Court, which are largely conceded, and the defendants' exhibits which are before the Court, which I will refer to in just a moment, show that the Whitney National Bank started several years ago to consider ways and means by which it could circumvent Section 36 of the National Bank Act and get a branch office over in Jefferson Parish, Louisiana.

For example, Your Honor, before the Court is Defendant's Exhibit 4, which is testimony given by the President [19] of the Whitney National Bank of New Orleans before the Federal Reserve Board. I have a copy of that defendant's exhibit, Your Honor, if you would like to see it.

(The document was handed to the Court by Mr. Merrigan.)

Mr. Merrigan: This is what the President of the Whitney National Bank of New Orleans said, at pages 6 through 9, Your Honor:

"The parish in our state is equivalent to a county," he said.

"Under present laws in our state, the Whitney is not permitted to establish branches outside the Parish of Orleans."

"There is a rapidly growing industrial area in adjoining Jefferson Parish up river from Orleans."

He goes on to say:

"The industrial development, in the form of large plants, more or less extends up river on both sides"—that is the Mississippi River running up through Louisiana—"to Baton Rouge, about 80 miles.

"There is, therefore, good reason to look forward to continued industrial growth along the river [20] with a concentration of small industries in Jefferson Parish.

"The management of the Whitney National Bank has been studying and weighing alternative methods of entering Jefferson Parish to serve our present customers and to participate in the further growth of that area."

And now he goes on to say this, Your Honor, and we are coming right to the heart of this case:

"The officers of the Whitney National Bank determined in 1960 that the holding company was the proper solution, provided we could put the ownership of the present Whitney National Bank of New Orleans stock into such a company and, by the use of Whitney assets, establish a bank in Jefferson Parish, which would likewise be fully owned by the holding company."

Now, if the Court please, the plan——

The Court: May I ask you a question before you proceed?

Mr. Merrigan: Yes, Your Honor.

The Court: To pinpoint this matter, what is the precise nature of the certificate which the Comptroller of the Currency proposes to issue?

Mr. Merrigan: He proposes to issue a certificate to the Whitney National Bank in Jefferson Parish, which the [21] plaintiffs say will be a branch bank of the Whitney National——

The Court: I know, but that is not what I asked you. What is the precise certificate? I am not asking what your construction is. I know you construe it as creating a branch bank, but what actually does it do, technically?

Mr. Merrigan: It is a certificate authorizing the Whitney National Bank in Jefferson Parish—which I am about to show Your Honor how it was organized, with what funds and how—to open banking facilities in Jefferson Parish.

The Court: Well, would it in so and so many words

authorize the Whitney National Bank to open a branch or an office in Jefferson Parish?

Mr. Merrigan: No.

The Court: That is what I want to know. What will it do?

Mr. Merrigan: No, it doesn't.

The Court: What does it do?

Mr. Merrigan: It authorizes them to open the same thing as a branch.

The Court: I know, but I want to know what the certificate does. I don't want your construction of it. First tell me what it does in precise language.

Mr. Merrigan: I don't have the certificate before me because, of course, there is no certificate as yet; it is [22] restrained.

The Court: I know, but what is the application that has been presented to the Comptroller? What does it seek?

Mr. Merrigan: It seeks to open a bank in Jefferson Parish by the Whitney National Bank in Jefferson Parish.

The Court: Well, I didn't so understand it from the testimony that you just read. I thought that the Whitney National Bank seeks to create a holding company.

Mr. Merrigan: That is correct.

The Court: Which, in turn, would own stock in another bank to be established in Jefferson Parish.

Mr. Merrigan: That is correct.

The Court: Well, that is different, isn't it, from authorizing the establishment of a branch of the Whitney National Bank?

Mr. Merrigan: Well, if that is different, Your Honor, then Section 36 will be repealed, because any bank could do it that way.

The Court: But why didn't you tell me? I have been trying to ascertain just what the application of Whitney National Bank was in precise terms.

Mr. Merrigan: That is exactly what I wanted to hand to Your Honor.

[23] The Court: You have been telling me that the Whitney National Bank, or that the Comptroller of the Currency proposes to issue a certificate authorizing the establishment of a branch, and of course it seemed to me strange that the Comptroller of the Currency would violate the express provision of law. Now it appears he does not propose to do that at all; he proposes to authorize the

creation of a holding company which would own the stock of a bank.

Mr. Seaman: Excuse me, Your Honor——

The Court: Is that correct?

Mr. Seaman: That is not precisely correct, Your Honor, no.

The certificate is to the Whitney National Bank in Jefferson Parish directly; it is not to the holding company. The holding company is a state corporation.

The Court: But it will be a different bank, not a branch of the Whitney National Bank?

Mr. Seaman: Precisely, Your Honor.

Mr. Merrigan: Except, Your Honor, that we are going to be talking about some law that is well established that makes——

The Court: I know, Mr. Merrigan, but before I can construe what a transaction amounts to I have to know what the form of the transaction is, and you have been telling me [24] all this time that the Comptroller of the Currency proposes to authorize the Whitney National Bank to establish a branch in Jefferson Parish when he does not do that at all.

Mr. Merrigan: Well, Your Honor, you will recall that I directed your attention to section (f), I believe it was, of Section 36, which defines a branch to be any additional office of another bank.

The Court: Yes, but as I understand it, this is a separate corporation, a separate banking institution.

Mr. Merrigan: Well, except, Your Honor, if you would please permit me to move to the next step.

The Court: Yes, you may proceed, but it took me an awful long time to find out what the form of the transaction was.

Mr. Merrigan: Well, I am going to be honest with you, it took me a long time to understand it, too.

The Court: I know, but I think you can help the Court by being more exact.

You may proceed.

Mr. Merrigan: Now, I just quoted to Your Honor language of the President of the Whitney National Bank which said that under present laws they were not permitted to branch, that they had been studying alternative methods of getting into Jefferson for years, and that they finally decided that the [25] holding company was the proper solu-

tion, provided we could put the ownership of the present Whitney National Bank of New Orleans into such a company, that is, a holding company, and by use of Whitney National Bank of New Orleans funds establish a bank in Jefferson Parish which would likewise be fully owned by the holding company.

Now, before Your Honor is an exhibit which we made up from another exhibit which has been introduced into this action by the defendant himself.

(The document was handed to the Court by Mr. Merrigan.)

Mr. Merrigan: On the second page of this so-called re-organization plan we have the various steps by which the Whitney National Bank of New Orleans went about getting this bank into Jefferson Parish.

Step one, Your Honor, we find the Whitney National Bank of New Orleans with 112,000 shares of stock, taking \$350,000 of its own capital out of its capital account and forming the so-called Whitney Holding Corporation. Now, that is the first place that Section 1845 of Title 12 comes into play.

Now, we have the Whitney National Bank of New Orleans, with its holding corporation, with \$350,000 of its own capital, receiving 5600 shares of the holding corporation [26] for that \$350,000 cash investment.

In step two, the Whitney Holding Corporation then creates an organization known as the Crescent City National Bank, which also has 112,000 shares. And the holding corporation takes the \$350,000 it got from the Whitney National Bank of New Orleans and puts it into this Crescent City National Bank and, in return, takes all of the shares of the Crescent City National Bank.

Now, Your Honor, the Crescent City National Bank never opened its doors, it is not a bank, never operated anywhere, and until step three here, where it merges with the old Whitney National Bank of New Orleans, never conducted a bank anywhere.

But the Comptroller of the Currency in this case issued a certificate authorizing the formation of the Crescent City National Bank.

The Court: Now, what do you seek to enjoin?

Mr. Merrigan: I seek to enjoin back here at step four, Your Honor, when we get to step four, because now in step three, having organized this phanton bank, a bank that doesn't exist anywhere but on paper, the Whitney National

Bank of New Orleans merges by agreement with this phantom bank and thereby eliminates any dissenting stockholders in the Whitney National Bank who don't want to go along with the plan. The [27] Whitney——

The Court: What do you mean by merges?

Mr. Merrigan: By agreement. They have a merger agreement.

The Court: You mean that separate corporate entities are eliminated, it is all one corporation now?

Mr. Merrigan: You started with the Whitney National Bank of New Orleans, it forms a holding corporation, then the holding corporation forms a phantom bank, the old bank——

The Court: Suppose we call it Crescent City instead of phantom.

Mr. Merrigan: It doesn't exist.

The Court: I do not know what you mean by a phantom.

Mr. Merrigan: It is a bank that the Comptroller has issued a certificate to, Your Honor——

The Court: But let's not use opprobrious appellations.

Mr. Merrigan: I'm sorry, Your Honor. It's a bank that exists only on paper.

The Court: Well, all banks started on paper; then they build themselves up.

Mr. Merrigan: They usually open their doors, though, and let you and me come in and make deposits and borrow [28] money. But this bank wasn't formed for that purpose.

The Court: Well, they haven't gotten that far, perhaps.

Mr. Merrigan: No, Your Honor, admittedly under the reorganization plan it was formed for one purpose only, to merge with the parent bank, Whitney National Bank of New Orleans.

The Court: What do you mean by merge? Do you mean that separate corporate entities have been eliminated and it is all one corporate entity?

Mr. Merrigan: The old bank, Whitney National Bank of New Orleans, the \$500,000,000 bank in New Orleans, merges into Crescent City National Bank, which is a bank on paper. The Whitney Holding Corporation then owns all of the stock in the Whitney National Bank of New Orleans, and the Whitney National Bank in New Orleans, as merged into this Crescent City Bank, then owns all of the stock in the Whitney Holding Corporation; and any dissenting stockholders in the Whitney National Bank have been eliminated.



The Court: Then there is no merger. The separate corporate entities still exist, do they not?

Mr. Merrigan: Well, it's part of this fantastic plan, we say—

The Court: That is my difficulty with your use of [29] the term merger. A merger of two corporations means that the two separate corporate entities are eliminated and they become one corporation.

Mr. Merrigan: Well, that does happen here.

The Court: Well, in this case Crescent still remains as a separate corporate entity, does it not?

Mr. Merrigan: It survives and then changes its name back to Whitney National Bank of New Orleans. You see, this is what made it so difficult for me, Your Honor.

The Court: Well, I still don't understand what happened to Crescent. Does Whitney own all of its stock or is Crescent liquidated as a corporate entity or what?

Mr. Merrigan: All of its stock is owned by the holding corporation and the holding corporation got its stock with \$350,000 of money which came from the Whitney National Bank of New Orleans.

The Court: Let's forget the amounts. What happened to the corporate structure?

Mr. Merrigan: Whitney National Bank of New Orleans, which started here, merged into this bank, Crescent City National Bank.

The Court: But what do you mean by merged? That is what I want to know. Did it buy its stock or was there an agreement of merger which eliminated the separate corporate [30] entities?

Mr. Merrigan: That is correct, Your Honor.

The Court: You know, I think it would be much clearer if you would use precise technical terminology instead of using figures of speech.

Mr. Merrigan: Well, I will in step three—

The Court: Figures of speech do have a literary flavor, but sometimes they convey wrong ideas.

Mr. Merrigan: Well, I agree, Your Honor, and I don't mean to do that.

The Court: I know you don't mean it, but it would clarify the Court's thinking if you used precise legal terminology, because the word merger, you know, can mean any one of a lot of things.

Mr. Merrigan: Your Honor, they merged by agreement.

There was an agreement between the Crescent City National Bank and the Whitney National Bank of New Orleans whereby all of the assets of the Whitney National Bank of New Orleans were taken over by the Crescent City National Bank. The Whitney National Bank of New Orleans, as it existed before that agreement—

The Court: The words taken over can mean a lot of things. Did the Whitney buy the assets of Crescent? Did it buy its stock? Or was Crescent liquidated as a corporation? [31] Any one of those things can be a taking over and sometimes the form that a transaction takes is very important.

Mr. Merrigan: I agree with Your Honor entirely.

The Court: Now, what is the form of the transaction?

Mr. Merrigan: The form of the transaction was a merger agreement between the Whitney National Bank of New Orleans and the Crescent City National Bank. By the terms of the agreement the Crescent City National Bank acquired all of the assets of the Whitney National Bank of New Orleans. The Whitney Holding Corporation was a party to that agreement. The Whitney Holding Corporation, which owned all the stock in the Crescent City National Bank by that time, acquired all the stock in the Whitney National Bank of New Orleans. In turn for this merger the Whitney National Bank of New Orleans acquired all the stock of the holding corporation, 1,120,000 shares.

The Court: What happened to the stock of Crescent?

Mr. Merrigan: The stock of Crescent was already owned at that time, under step two, by the holding corporation.

The Court: And it continues to be owned?

Mr. Merrigan: Yes.

The Court: In other words, that is not a true merger.

[32] Mr. Merrigan: Really not; really not. But that is what they propose to do, and the purpose of it was to eliminate dissenting stockholders in the Whitney National Bank. Under the provisions of the National Bank Act and the Comptroller's regulations if a dissenter doesn't want to go along with a plan he can have his shares appraised or the bank can buy him out as part of the merger arrangement.

The Court: Let me see if I understand it correctly, and I want you to correct me if I am wrong. The ultimate result was that Whitney National Bank owned all of the stock of Whitney Holding Company and Whitney Holding

Company owned all of the stock of Crescent Bank, is that correct?

Mr. Merrigan: Yes, and then owned all of the stock of the Whitney National Bank.

The Court: That is no merger.

Mr. Merrigan: And then owned all of the stock of the Whitney National Bank of New Orleans. And then, Your Honor, Whitney National Bank of New Orleans as it was originally incorporated ceased to exist; it was now part of the Crescent National Bank.

The Court: Who ceased to exist?

Mr. Merrigan: The Whitney National Bank of New Orleans ceased to exist.

The Court: What happened to the Whitney National [33] Bank of New Orleans?

Mr. Merrigan: It transferred all of its assets over to the Crescent City Bank. And then the Crescent City Bank changes its name to the Whitney National Bank of New Orleans. So, we come back to where we have the Whitney National Bank of New Orleans in the corporate form of the Crescent City National Bank owning all of the stock of the holding corporation and the holding corporation owning all of the stock of the Whitney National Bank of New Orleans. And then we go to step four.

The Whitney National Bank of New Orleans, as merged by agreement with Crescent, then in the form of Crescent, takes \$650,000 of its capital funds and puts those \$650,000 into the Whitney Holding Corporation. The Whitney Holding Corporation then uses the \$650,000 it gets from the Whitney National Bank of New Orleans to organize and open the Whitney National Bank In Jefferson Parish, and, in turn, the Whitney Holding Corporation acquires all of the stock in the Whitney National Bank In Jefferson Parish.

The Court: Well, now, let me see if I understand that correctly. The ultimate result still is that the Whitney National Bank of New Orleans owns, am I correct, owns the stock of the Whitney Holding Corporation?

Mr. Merrigan: Yes, Your Honor.

[34] Mr. Bloom: As a matter of fact, Your Honor, that is not correct.

Mr. Seaman: Excuse me, Your Honor. May I speak to that?

The Court: Yes.

Mr. Seaman: Your Honor, the ownership of the holding company stock was only momentary. They gave it to the stockholders of the Whitney National Bank in exchange for the stock which they had formerly had, and the stock——

The Court: What is the present situation? Who owns the stock of the Whitney Holding Company?

Mr. Seaman: The stockholders of the Whitney Holding Corporation, Your Honor, are the former stockholders of the Whitney National Bank in New Orleans.

The Court: Who owns the stock of the Whitney National Bank?

Mr. Seaman: The new——

The Court: Of New Orleans.

Mr. Seaman: The new Whitney National Bank, Your Honor, is——

The Court: I want the present situation as of today.

Mr. Seaman: Yes, Your Honor, I am stating it. The Whitney National Bank of New Orleans is the former Crescent [35] Bank and that is one hundred per cent owned at the present time by the Whitney Holding Corporation. You see, in effect——

The Court: You mean the stock of the Whitney National Bank of New Orleans is owned by the Whitney Holding Corporation?

Mr. Seaman: Yes, Your Honor.

The Court: The former stockholders of the Whitney National Bank own the stock of the Whitney Holding Corporation?

Mr. Seaman: Yes, sir.

The Court: And the Whitney Holding Corporation owns the stock of the Whitney Bank of Jefferson Parish, is that it?

Mr. Seaman: Yes, Your Honor, that is correct.

The Court: Now, it took us pretty long to get at that.

Mr. Merrigan: I am terribly sorry, Your Honor.

The Court: You see, there are occasions when forms of a transaction are quite important.

Mr. Merrigan: Yes, Your Honor, that is true, and I apologize to the Court for not being able to get to that more quickly.

Now, of course, the result of the transaction is, as expressed by the President of the Whitney National Bank in the exhibit which is before the Court, that is, the one entitled

[36] Reorganization Plan and the letter to the stockholders dated October 28, 1961, is that the former stockholders of the Whitney National Bank of New Orleans own all of the stock in the Whitney Holding Corporation and it, in turn, owns all of the stock in the Whitney National Bank in Jefferson Parish.

The Whitney National Bank in Jefferson Parish has been organized without one cent of any new capital contribution.

The Court: But I would like to know what point you are making. Wherein is the illegality? You have been speaking for over half an hour and you haven't yet told me wherein the alleged illegality in this plan is.

Mr. Merrigan: The position of the plaintiffs in this case is that it was admittedly and concededly a violation of the law, a violation of Section 36.

The Court: I do not understand it is concededly a violation of law.

Mr. Merrigan: A direct opening of a branch is conceded to be a violation of Section 36.

We say that this was a plan, a device to circumvent Section 36 of the National Bank Act.

The Court: I see.

Mr. Merrigan: And we refer to cases, Your Honor, in our brief going back as far as Northern Securities Company, where a corporation desiring to circumvent the law formed a [37] holding company, eliminated competition and violated the provisions of the antitrust laws.

The Supreme Court of the United States in a long line of decisions emanating from 1903 forward has said when parties set out by corporate devices to circumvent the prohibitions of a statute the Court will sweep aside the corporate device used and strike down the plan as though it were accomplished directly.

And that is precisely the middle part of this case, the heart of this case. We say you can't do indirectly what you can't do directly. And if you make it complicated enough by corporate devices and corporate plans, the court, a court of equity, should go behind that device.

The Court: Is it your contention that, as a matter of fact, the money of the Whitney National Bank of New Orleans is behind the money of the Whitney National Bank of Jefferson Parish? Is that it?

Mr. Merrigan: There is no money in the Whitney Na-

tional Bank in Jefferson Parish but money emanating from Whitney National Bank of New Orleans.

The Court: Have I correctly stated your contention?

Mr. Merrigan: You have, Your Honor.

The Court: Very well. Now, is the Whitney National Bank of Jefferson County in operation now, or is it [38] awaiting the certificate?

Mr. Merrigan: No, Your Honor, it is awaiting the certificate.

And Your Honor is undoubtedly familiar with the decisions in this Circuit by Judge Youngdahl in *Commercial State Bank of Roseville v. Gidney*, *Comptroller of the Currency*; *Michigan State Bank v. Gidney*, *Comptroller of the Currency*; *Camden Trust Company v. Gidney*, *Comptroller of the Currency*.

The Court: I had one of those cases. I am not sure whether it was the Michigan case or not. I think it was a Pennsylvania case that I had.

Mr. Merrigan: These cases have all been cases—well, the first two, the Michigan State Bank case and the Commercial State Bank of Roseville, involved direct branching attempts, and this Court has uniformly struck down direct branching attempts in violation of Section 36 and has been affirmed by the Court of Appeals.

There has been a case in the Sixth Circuit, which is referred to in our brief, *Wayne National Bank v. Gidney*, *Comptroller of the Currency*, certiorari denied by the Supreme Court of the United States.

The Court: For what proposition are you citing those cases?

Mr. Merrigan: These are cases involving direct [39] violations by the Comptroller of Section 36.

The Court: I do not think you need to labor that point. The question is whether the transaction involved here constitutes a violation; isn't that it?

Mr. Merrigan: That is correct, Your Honor. The question involved here is one, really, of first impression because this is the first time, to my knowledge and my research, and I have seen nothing that the defendant has produced to show that any bank, any national bank with its own funds has sought to avoid the prohibition of Section 36 by taking its funds, putting it into a holding company and opening the bank beyond the parish line.

There was a case here involving the Camden Trust Com-



pany, a New Jersey case, and in that case individual stockholders of a New Jersey bank, I think it was the Haddonfield National Bank, as I recall it, Your Honor, individual stockholders went out and raised \$500,000 of new capital, and then they, as individuals, went over beyond a county line in New Jersey and opened a new bank.

The Court: Is that the case I decided? I know I decided one of those cases.

Mr. Merrigan: No, that was Judge Walsh, I think, Your Honor.

The Court: I decided one of those cases. I have [40] forgotten which one it was.

Mr. Merrigan: In this case, which is relied on so strenuously by the defendant Comptroller here, we had a complete new raising of \$500,000 of capital by the individual stockholders of the Haddonfield National Bank and they went beyond the county line and opened a new bank under a completely new name, the Delaware National Bank. And the Court said, We will affirm that. Although I want the Court to understand that there was a very sharp dissent even on that type of arrangement in the Court of Appeals. We will sustain that because you have new capital, it is not the capital of the old bank being used to open the new branch, it is new fresh capital raised by individual stockholders. And they called that an affiliate.

But in this case, Your Honor, the evidence before this Court will show, in the words of the President of the Whitney National Bank of New Orleans and in the words of the Comptroller of the Currency, the Whitney National Bank of New Orleans said, We do not want an affiliate, it's too awkward, it's too loose, it's too uncontrollable; we want a holding company so that we can approach the branch phase of it. That is the language which is in Defendant's Exhibit 4, which is before the Court. And the Comptroller, in his affidavit before this Court, says that starting back in 1960, I believe it was [41] representatives of the Whitney National Bank came to the Comptroller's office and said we want to get into Jefferson Parish, and they discussed with the Comptroller of the Currency ways and means they might accomplish that purpose. And the Comptroller said, Mr. Berry—representing the Whitney National Bank of New Orleans—you can go into Jefferson Parish by one of two routes: you can have an affiliate or you can try the holding company route. And Mr. Berry said, We don't

want an affiliate—which is the type of transaction involved in the Camden Trust Company case. He said, We want a holding company so that we can approach the branch phase of it.

And that is admitted by the sworn affidavit of the Comptroller of the Currency and by the testimony of the President of Whitney National Bank before this Court on this motion.

Now, these are exhibits (indicating), Your Honor, which have been filed by the proposed intervenor, Whitney National Bank In Jefferson Parish, which will point up one of the essential differences in the Camden Trust case.

(The documents were handed to the Court by Mr. Merrigan.)

Mr. Merrigan: In Camden Trust we had the Haddonfield National Bank opening a bank under the name of Delaware [42] National Bank; I believe that is the correct name. Here we have the Whitney National Bank of New Orleans, with its \$500,000,000 in New Orleans, Louisiana, opening a branch under the name Whitney National Bank, and with little letters under it, In Jefferson Parish.

In other words, in Camden the Court of Appeals said, We will authorize the affiliate route where individual stockholders raise new capital and authorize the opening of the Bank because there is no confusion in names. But here they are using even the same name.

Now, this Comptroller of the Currency before the Court, Your Honor, is charged under Section 1842 of the Bank Holding Company Act with the obligation to tell the Federal Reserve Board whether he approves or disapproves of any particular holding company operation, and the Federal Reserve Board in a letter before this Court has advised that the duty to determine whether something is lawful or unlawful under the National Banking Act rests with the Comptroller in the first instance.

In this case, when the Whitney Holding Corporation went to the Federal Reserve Board and said, Now we have our holding corporation and under the Holding Company Act we want you to approve our acquisition of the stock in the Crescent City Bank—when the Whitney Holding Corporation went to the [43] Federal Reserve Board and asked that Board to approve their acquisition of the shares in the Crescent City National Bank and in the Whitney Na-

tional Bank In Jefferson Parish, the Comptroller of the Currency wrote a letter to the Board, didn't even mention Section 36, didn't mention any of the prohibitions which have gone on for years under the National Bank Act, but simply wrote this letter (indicating) to the Board of Governors of the Federal Reserve Board.

(The document was handed to the Court by Mr. Merrigan.)

The Court: What does it say?

Mr. Merrigan: It simply says that he approves it.

The Court: But is that binding on the Board?

Mr. Merrigan: No, under Section 1842 it isn't binding on the Board, but it authorizes the Board and the Board under such circumstances is authorized then not to hold a statutory hearing in Louisiana which would enable all the parties to come in before the Federal Reserve Board and examine and cross-examine witnesses.

The Court: Well, in other words, the action of the Comptroller is not final, is it? The final action will be the action of the Board.

Mr. Merrigan: No, Your Honor, no. The Comptroller issues the certificate which authorizes the opening of the [44] bank. The Federal Reserve Board action in this case was required for only one reason and one reason alone: the Whitney Holding Corporation couldn't acquire the shares in the Crescent City National Bank or in the Whitney National Bank In Jefferson Parish until it had gone to the Federal Reserve Board and gotten that Board's approval for the acquisition of the shares.

The Federal Reserve Board has no jurisdiction whatever over the authorization of the certification of the bank. And under the Bank Holding Company Act, Your Honor, any review of the Federal Reserve Board decision is limited to a review in the Fifth Circuit Court of Appeals, and you can't make the Comptroller a party to any review of the Federal Reserve Board decision, and we can't make the Federal Reserve Board a party to this proceeding.

The Court: Why not?

Mr. Merrigan: Because by Title 1218, 48 United States Code, the only review of the Federal Reserve Board's decision, under the Bank Holding Company Act, is limited to a review in the United States Circuit Court of Appeals either here in the District or in the Fifth Circuit.

The Court: Then isn't that your remedy?

Mr. Merrigan: No, Your Honor, that isn't my remedy because, as Exhibit C shows here, this is the Comptroller [45] of the Currency's proposed action. He proposes to issue a certificate authorizing the opening of the bank before that order becomes final. And if he does that, under a long line of decisions, the closest to home of which is the Roseville decision by Judge Youngdahl, no one but the Comptroller himself can question—

The Court: I know, but don't cite the decision of another District Court because that is not binding on me.

Mr. Merrigan: I understand that, Your Honor, and I didn't mean to infer that that was, but what I am trying to say is that by a long line of decisions, including the Supreme Court of the United States—

The Court: Anything that the Supreme Court holds and anything that the Court of Appeals holds is binding on me. I have a high regard for each of my colleagues, but that is not binding on me.

Mr. Merrigan: No, I realize that, Your Honor. Of course, Judge Youngdahl's decision was affirmed by the Court of Appeals.

The Court: Then cite the Court of Appeals and not the District Court.

Mr. Merrigan: What I am trying to say, Your Honor, I am really not trying to cite cases to you or against you or anything. I am trying just to say that the rule of law [46] is, and it's been established by a long line of cases, that once the Comptroller issues his certificate no one can contest it, no one can compel its revocation—

The Court: You don't mean that that is the law. You mean that you submit that it is the law.

I am not sure that it is the law. That is your contention, but don't be so dogmatic about it.

Mr. Merrigan: Well, what I mean to say to the Court is that no one can contest it but the Comptroller himself. That is the law as I understand it, Your Honor.

The Court: That is different. I am not so sure that you are right about that.

Mr. Merrigan: I want to say to the Court that there is one other possibility, a quo warranto proceeding by the Attorney General of the United States, and that was discussed in the Roseville decision, too, and was held to be such a speculative remedy—

The Court: That is speculative.

Mr. Merrigan: In other words, if the Comptroller goes ahead, Your Honor, and issues this certificate while the proceedings are pending in the Fifth Circuit Court of Appeals to review the findings of the Federal Reserve Board under the Holding Company Act there will be no remedy whatsoever to cause the bank, which will then be opened, assuming the Fifth [47] Circuit found it to be contrary to law, we could under no circumstances prevent the final result, which is the bank which is already in existence in Jefferson Parish.

The Court: Well, except that it would prevent the acquisition of the stock of the new bank by the holding company, would it not?

Mr. Merrigan: That has been done, as I understand it.

The Court: I say, if the Federal Reserve Board disapproves the transaction the holding company could no longer own the stock of the bank in Jefferson Parish, isn't that correct?

Mr. Merrigan: Well, assuming that would be true, I still say that that isn't the remedy for the plaintiffs, who are not so interested in who holds the stock but in the bank which is opened with the capital of the other bank.

The Court: I see. Well, you have taken quite some time. I hope you will come to a conclusion in short order.

Mr. Merrigan: I will, Your Honor.

The Court: Because I have a long calendar and you have taken almost an hour.

Mr. Merrigan: Well, I am terribly sorry, Your Honor.

The Court: That is all right. I want to give you [48] a full hearing because this is very important, but I hope you will come to a conclusion fairly soon.

Mr. Merrigan: Thank you, Your Honor. I just wanted to bring to Your Honor's attention, if we might, we have sworn affidavits before the Court and, as I say, most of the facts involved in this case are conceded. The amount of checking accounts of the plaintiff Bank of New Orleans, for example, in Jefferson Parish, Louisiana, amount to approximately—

The Court: What has that to do with this case?

Mr. Merrigan: Irreparable damage, Your Honor. \$2,029,000 as of June 21, 1962.

The Court: You don't fear that all your depositors, all

your customers are going to withdraw their accounts and go over to the new bank, do you?

Mr. Merrigan: What we fear is that when this bank, with \$500,000,000 of combined resources, opens its branch or branches, as we call it, in Jefferson and then throughout the State of Louisiana, as it would then be free to do under the ruling of this Court confirming the Comptroller's action in the case—

The Court: All that is before me is this one institution and not throughout the State of Louisiana.

Mr. Merrigan: This is the beachhead not only for [49] this bank, but I say to the Court that this, being a case of first impression, is the beachhead for all national banks similarly situated who have been wanting to branch for years. This is the beachhead. If this succeeds, Section 36 will no longer be a stumbling block; all they have to do is transfer their stock to a holding company and let the holding company open the branch.

So, this is a case of extreme national importance and it is a case which at the present time is a matter of tremendous concern to the President of the United States. This is a copy of his memorandum to the defendant Comptroller (indicating), among others, stating that this entire question of branching, branching through intermediaries, should be studied so that new legislative proposals could be made in 1963.

(The document was handed to the Court by Mr. Merrigan.)

The Court: I don't think the President of the United States ought to be quoted before this Court.

Mr. Merrigan: All right, Your Honor.

The Court: Is this part of the record?

Mr. Merrigan: It is part of the record, Your Honor. This was issued by the White House as—

The Court: Is this in the file in this case?

[50] Mr. Merrigan: Yes, it is, Your Honor.

The Court: I see. Very well. I have to decide this case on the law and I do not think policy ought to be considered by the Court. That is for the Executive Branch of the Government and for the Congress.

Mr. Merrigan: One last thing, Your Honor, I directed Your Honor's attention to Section 1846 of Title 12, which reserved to the states full control and jurisdiction over



bank holding companies and banks. By emergency action of the Louisiana Legislature, since the Comptroller of the Currency announced his purpose to allow this Whitney National Bank to open its facilities in Jefferson Parish, the House of Representatives of the Legislature of the State of Louisiana, by a vote of eighty to sixteen, the Senate of the State of Louisiana, by a vote of twenty-eight to seven, have passed the so-called Uniform State Holding Company Act—

The Court: This has nothing to do with the matter that I have to decide. This is all irrelevant, Mr. Merrigan.

Mr. Merrigan: Yes, Your Honor.

The Court: You know, I am not sitting as a jury or as a committee of Congress. I am confined to the law and judicial discretion.

Mr. Merrigan: I was leading up to the Braeburn decision, Your Honor.

[51] The Court: What about it?

Mr. Merrigan: That was a decision handed down by the Supreme Court of the State of Illinois involving a problem almost identical to the situation here involved. In that case the state legislature by emergency action, such as the one before this Court, had passed this Uniform Act. That case specifically held, Your Honor, that branch banking can result in one of two ways, either directly or through the device of a holding company. And they commented on this particular bill which has now been passed in Louisiana, awaiting the Governor's signature momentarily. They said

The Court: You mean a court commented upon a bill that has not become a law as yet?

Mr. Merrigan: No, they commented on this Uniform Act, Your Honor. And in that case the thing that is important about that case is that the Supreme Court of Illinois specifically found that branch banking in contravention of Section 36 can result in one of two ways, either by direct—

The Court: This is a Federal question, not a question of state law.

Mr. Merrigan: It went to the Supreme Court and the Supreme Court dismissed the appeal for want of a substantial Federal question, and that was, of course, 1846 reserves to the states the right to control these matters. [52] We have before Your Honor an opinion of the At-

torney General of Louisiana holding that this would be in contravention of state law.

The Court: You know perfectly well that that is not authority. An opinion of the attorney general of a state deserves respect and will receive respect, but that is not an authority on which the Court can base a decision.

Mr. Merriga: No, Your Honor, I agree, and we don't mean that we are falling back on things that really are not usual. We say that our case can be decided under Section 36, Your Honor.

~~Thank~~ Thank you very much, and I want to apologize to the Court for the length of this, but it has been difficult to cover.

Thank you.

The Court: That is all right. The Court realizes this is a very important matter.

Mr. Seaman.

Mr. Seaman: If it please the Court, this is a matter of Federal law, Your Honor, and it is our position, very briefly, that this case is controlled by the recent decision in the Camden Trust case, Camden Trust Company vs. Gidney. Mr. Merrigan did refer to it in his argument. It was decided by the Court of Appeals—

[53] The Court: What is the citation? Have you got the book here?

Mr. Seaman: Yes, Your Honor, I do. Would you like me to hand you the book?

The Court: Yes, suppose you hand it up.

(The book was handed to the Court by Mr. Seaman.)

Mr. Seaman: Certiorari was—

The Court: You are referring to Camden Trust Company against Gidney, 301 F. 2d 521, is that the case you are referring to?

Mr. Seaman: Yes, Your Honor. Certiorari was denied May 21st in that case, Your Honor.

The Camden Trust Company case is very similar to the present case. That is the case that Mr. Merrigan discussed, where the management of an existing bank in New Jersey organized a new bank, a different bank at another location, and it was challenged on the ground that that was a violation of the Branch Banking Law.

The Court: I notice that Judge Bastian dissented in that case.

Mr. Seaman: Yes, Your Honor, he did.

The Court: And also that there was a petition for rehearing and that Chief Judge Miller and Circuit Judge [54] Bastian stated that they would grant the petition for rehearing en banc.

Mr. Seaman: It was a hotly contested case, Your Honor. We consider, however, that the facts are so similar to the present case that there is no escape from the conclusion that it is controlling here.

The only real difference, Your Honor, between the facts of the present case and the Camden Trust case is that here the stock of the two banks will be owned by a holding corporation, the Whitney Holding Corporation that was created by this series of transactions that Mr. Merrigan discussed. Whitney Holding Corporation, however, will be the stockholder of the banks, and in the Camden Trust case the stockholders of the two banks were the same individuals. I don't mean to imply that they owned a hundred per cent of the stock because I understand that is not the case, but this group did own over fifty per cent of the stock, and, thus, the two banks became affiliates.

Affiliate relationships in banking, Your Honor, are matters which have been long recognized.

The Court: I am going to interrupt you with a question, Mr. Seaman. How did the Gidney case arise? Was that on a final judgment after a trial?

I see, this was a summary judgment.

[55] Mr. Seaman: Yes, summary judgment was granted, Your Honor. It was in much the same posture as the present case except—

The Court: No, what is before me is a motion for preliminary injunction. There is no motion for summary judgment before me.

Mr. Seaman: That is true, Your Honor, there is no motion for summary judgment.

The Court: I think there is a vast difference.

Mr. Seaman: Well, if I am not mistaken there was also a motion for preliminary injunction in the Camden Trust case, Your Honor, and that was denied at the time that the Government and the intervener were granted summary judgment. There was an intervenor in that case also, the bank which was seeking the certificate of the Comptroller.

Mr. Merrigan: I don't want to interrupt, but there was a voluntary stay.

The Court: Just a moment. I have heard you at length. I want to give opposing counsel an opportunity to present their argument.

Mr. Merrigan: Thank you, Your Honor. I'm sorry.

Mr. Seaman: Yes, Your Honor, I believe there was a voluntary stay of the certificate also in that case. This is what Mr. Merrigan is referring to. I don't believe, however, [56] those differences are of any real significance to the present case. The decision was based on the proposition, Your Honor, as I understand it, that there was an independent bank about to be chartered in the case and the Comptroller had discretion to charter that independent bank; and that the nature of the independent bank, despite the fact that it was closely controlled, if that is the correct term, at least controlled a majority of the stock by the same people who controlled the other bank, the original bank, that that didn't make any difference and that it was not a branch of the original bank that the management controlled.

It not being a branch, it was, therefore, not in violation of Section 36(e), the Branch Banking Law, which is the main reliance that plaintiffs place here; and, therefore, it being an independent bank, the Comptroller had discretion to issue his certificate, and it was issued in that case.

If it were not for this Branch Banking Law, Your Honor, it is our contention that the discretion in the Comptroller here would be unlimited. This is a matter of agency action, a matter which has been committed to agency action under the Administrative Procedure Act. There is no statutory form of review for the—

The Court: The Camden Trust Company case is a bit different, isn't it? It involved two independent banks [57] each having the same group of stockholders.

Mr. Seaman: Yes, Your Honor, that is the difference. That is true.

The Court: Here you have a holding corporation owning the stock of both banks. Isn't that a situation of a different type?

Mr. Seaman: Yes, Your Honor, it is different. We consider, however, that the difference is not significant.

The Court: Well, I don't know. Isn't it distinct in principle? Well, I will let you answer that question after our usual mid-morning recess.

We will take our usual mid-morning recess at this time.  
(Brief recess.)

The Court: You may proceed, Mr. Seaman.

Mr. Seaman: Your Honor, your question was as to the difference between the Camden Trust case and the present case. Your Honor, as I view the Camden Trust case, it was decided basically on the ground that what was involved was an independent bank, a separate bank, which was applying for a certificate from the Comptroller; and because it was separate and for the list of differences that the Court gives there on the second or third page of the opinion, because of those differences it was not and could not be considered a branch, [58] that a branch has to be a part of the parent organization.

The Court: Yes, I understand all that, but there is a very vital difference. There was independent capital in each bank, even though the capital was furnished by the same people. But here you have a holding company that owns the stock of both banks.

Now, I notice that the word subterfuge was used in the Camden Trust Company case and the word evasion, which is not as disagreeable as subterfuge. I am not going to use either of those two terms, but isn't this a means of getting around a prohibition of this statute?

Mr. Seaman: Your Honor—

The Court: There is nothing reprehensible in that. I do not mean to suggest that anything reprehensible was done. But it is clear, is it not, that what the Whitney National Bank was doing was trying to establish what in essence, though not in form, was a branch bank, because it was another bank that it controlled.

Mr. Seaman: Your Honor, subject to what Mr. Monroe will probably wish to say on behalf of the Whitney, I would like to answer that this way: it is true, Your Honor, that the Whitney Jefferson operation is a means used for the Whitney Bank in New Orleans to pursue banking business in Jefferson Parish. I think there can be no real question about [59] that. But that is not the same thing, in my mind, Your Honor, as saying that it is a branch.

The Court: It is clear from the extracts of the testimony that has been read that the bank officials, being confronted with the statutory prohibition, perfectly honestly tried to figure out some other legal way to accomplish what the statute prohibited. Isn't that what this amounts to?

Mr. Seaman: Your Honor, I would say, yes; I believe that is correct.

The Court: I notice this action was filed almost a month ago. The Government hasn't moved, has it, for summary judgment or made a motion to dismiss?

Mr. Seaman: Your Honor, the reason we didn't do that was that we wanted an early hearing on the matter.

The Court: You could have as early a hearing on a motion for summary judgment as you can on a motion for preliminary injunction.

Mr. Seaman: Well, we presented our opposition, Your Honor, on the 20th of June. There was—

The Court: You could have filed a motion for summary judgment at the same time, Mr. Seaman.

Mr. Seaman: Yes, Your Honor.

The Court: What bothers me is this: I don't think I ought to decide this question of law on a motion for [60] preliminary injunction, which is addressed to the discretion of the Court, because this is a pretty important matter.

While if there was a motion for summary judgment, I could decide it. On the other hand, if there are some facts that are to be adduced, possibly the case would have to go to trial.

Mr. Seaman: Well, Your Honor, this is a motion for a preliminary injunction and the denial of such a motion is not a decision on the merits of the case.

The Court: Exactly. Neither is the granting of it. But here is what is bothering me, Mr. Seaman: if I deny the motion for preliminary injunction and the certificate is issued by the Comptroller of the Currency, the bank starts operating; and thereafter, if it should be held that this action was illegal, we would have a pretty difficult situation to unscramble, would we not?

Mr. Seaman: Your Honor, I think the answer to that question is that the remedy of the plaintiffs lies in this case, really, with the Fifth Circuit Court of Appeals now, and that if the Fifth Circuit Court of Appeals were to reverse the Federal Reserve Board, the holding company operation of which—

The Court: Is there anything pending now in the Fifth Circuit Court of Appeals?

[61] Mr. Seaman: Yes, Your Honor, they filed their appeal on June 30th.

The Court: Then isn't that all the more reason why the



Comptroller of the Currency should stop his hand and wait and see what happens?

Mr. Seaman: Well, Your Honor, the issuance of the certificate by the Comptroller of the Currency doesn't have anything directly to do with the proceeding before the Federal Reserve Board.

The Court: Yes, but the minute the Comptroller issues his certificate the bank can open its doors and do business, isn't that so?

Mr. Seaman: Yes, Your Honor; yes, that is true.

The Court: Now, suppose two or three months later there should be a final judgment in this case that the Comptroller of the Currency acted illegally. That would be a pretty sorry situation—well, it would be like trying to unscramble scrambled eggs, wouldn't it?

Mr. Seaman: Well, Your Honor, that would be true now because most of these eggs have already been scrambled. Most of the steps in this reorganization program that Whitney has undertaken have already been completed.

The Court: But is the bank operating?

Mr. Seaman: No, it is not operating.

[62] The Court: That is the point. The bank has not opened its doors yet.

Mr. Seaman: No, Your Honor, but it expended a considerable amount of money, as I understand it, getting ready to open its doors and it has gone pretty far.

The Court: I should think that the Comptroller of the Currency would want to wait until there is an adjudication in this action.

Mr. Seaman: Well, the Comptroller of the Currency, Your Honor, feels that the operation which is proposed here is lawful, that this bank has a right to open its doors.

The Court: Yes, but he may be mistaken, you know, because the question is a close one.

Mr. Seaman: Yes, Your Honor.

The Court: I am very strongly of the opinion that on a motion for preliminary injunction the Court ought not to express an opinion on the merits. The only question is whether the status quo should be continued.

Mr. Seaman: Well, it seems to me, Your Honor, that the answer to that question is whether or not the plaintiffs have a reasonable possibility of succeeding in the action.

The Court: Yes, and it does seem to me there is a substantial and reasonable doubt here as to the legality of this—

[63] Mr. Seaman: Your Honor, our position, of course, is that there is not a substantial doubt about it. For one thing, the Camden Trust decision also, Your Honor, because the bank holding company operation is not a new creature that they have just thought up. This is a regulated bank holding company, Your Honor.

The Court: But isn't this true, Mr. Seaman, that if this device is legal—and I am not going to express an opinion as to whether it is or is not, at this time—but if this device is legal, then you might as well repeal Section 36(c)?

Mr. Seaman: No, I would say, Your Honor, that that is not the case. 36(c) applies only to branches.

The Court: I understand. But it would become a dead letter because any bank that wanted to establish a branch would create a holding company as an intermediary.

Mr. Seaman: Yes, Your Honor.

The Court: Now, maybe that is legal.

Mr. Seaman: There would be certain differences, however, in the operation. One of the differences is that the independent bank under the holding company operation has its own capital, has limitations on the loans that it can make, it would have its own directors. None of these things are true of a branch, Your Honor. A branch has the lending powers [64] of the parent. A branch doesn't have directors, a branch doesn't have its own separate officers.

The Court: There are differences. The only question is whether the differences are sufficient.

Mr. Seaman: Your Honor, I did want to speak briefly about this holding company operation.

Your Honor, the Bank Holding Company Act of 1956 is the statute under which this holding company is proposing to operate. That statute, Your Honor, is administered by the Federal Reserve Board and not by the Comptroller of the Currency. And this holding company which has been set up is a Louisiana corporation. Your Honor, these questions have, for the most part, been gone into already before the Federal Reserve Board. That is the remedy, as we see it, that plaintiffs should be pursuing.

The Federal Reserve Board considers—has ruled that these transactions are legal. An appeal is pending from the Federal Reserve Board. And the Federal Reserve Board supervises bank holding companies, and this—

The Court: Isn't that all the more reason for maintain-

ing the status quo until the appeal before the Fifth Circuit is decided?

What is the status of that appeal?

Mr. Seaman: The appeal was just filed, Your Honor. [65] It was filed last Saturday.

The Court: How soon can it be heard, do you know?

Mr. Seaman: I really don't know, Your Honor, but I would suppose it would be some months. I don't know, though.

The Court: How long has this matter been pending before the Comptroller and before the Board?

Mr. Seaman: Well, I believe the Comptroller indicates in his affidavit that it's been pending since November, 1960.

Mr. Bloom: October, 1960.

Mr. Monroe: Since June, 1961.

The Court: Since when?

Mr. Seaman: June, 1961, Your Honor. Mr. Monroe, the attorney for the Whitney Bank, has been following the matter all that time. There were preliminary conversations with the Comptroller before the decision in October of 1961, which I guess was the first formal decision by the Comptroller in this matter.

Your Honor, I hope you will hear Mr. Malcolm Monroe at this time. He is——

The Court: Of course, I will hear everybody who is entitled to be heard. I am not cutting you off, Mr. Seaman. You may proceed.

Mr. Seaman: Mr. Monroe is the attorney for the [66] Whitney Bank and they do have the real interest in this case, in a sense. They are the ones who are——

The Court: I don't doubt the fact that the Whitney Bank has a real interest in the matter, of course.

Mr. Seaman: Yes, Your Honor. The Bank Holding Company Act of 1956, Your Honor, as I understand, had as one of its objectives the creation of this kind of a system. These bank holding companies operate all over the United States. There are a number of them. They hold banks—some of them hold banks across state lines. They operate, many of them——

The Court: Let's not go into all these ramifications. The question before me is a narrow one: should I stay the status quo until the merits of this action can be determined. That is the only question for me to decide on this motion.

Mr. Seaman: Well, Your Honor, our position on that is

that plaintiffs do not have a case which deserves that kind of relief at this point. The case is controlled by the Camden Trust case. The device that is being used here is the holding company device, which is a recognized device, which is controlled by the Federal Reserve Board. The plaintiffs have a remedy, which they are pursuing, before the Federal Reserve Board. It is an adequate and complete remedy. The Court of Appeals, if it reverses—

[67] The Court: That is all the more reason for maintaining the status quo, I think.

Mr. Seaman: Well, Your Honor, if the Court lacks jurisdiction to proceed because they have a remedy before another body, it would seem to me that the other remedy should be pursued rather than that this action, of which we say the Court lacks jurisdiction—

The Court: There are two independent steps here. One is the action of the Federal Reserve Board; the other is the action of the Comptroller. And I think the plaintiffs, if they have any rights at all, can pursue either or both remedies.

Mr. Seaman: It's quite true, Your Honor, that they would be entitled to pursue any remedy that they wanted to. The thing that strikes me, though, is that this remedy, this suit against the Comptroller is one which has no justification, that they are seeking to enjoin the Comptroller on a basis which on its face has no merit; and it has no merit. Your Honor, because this is not a branch. And since it is not a branch, the certificate should issue. The Comptroller has discretion to issue that certificate. The fact that there is this other proceeding pending points up the fact that that is where their remedy lies.

Your Honor, I think if I may, I would like to have [68] Mr. Monroe speak to you at this time on behalf of the Whitney Bank.

The Court: Very well.

Mr. Monroe: May it please the Court, I am Malcolm Monroe of the New Orleans Bar, Louisiana Bar, and I represent the Whitney Bank.

The Court: Well, the technical name is Whitney National Bank of New Orleans, is that it?

Mr. Monroe: Whitney National Bank of Jefferson Parish, a completely new bank organized and ready to do business and seeking to do business, with completely independent stockholders.

The Court: They are the intervenor in this case?

Mr. Monroe: The intervenor in this case.

I am also counsel for the Whitney National Bank of New Orleans and the Whitney Holding Corporation, and I have handled the proceedings since the original application with the Comptroller, which was in June of 1961 and which was approved by the Comptroller on October 14th of last year—October 18th, subject to the approval of the Federal Reserve Board.

I handled the proceedings before the Federal Reserve Board, which were filed in July of last year and which there was an advertisement for a public hearing, at which the [69] plaintiffs did not appear. That hearing was held here in Washington, published in the Federal Register on January 17th. On January 17th statements were taken from all parties in interest before the full seven-man Board. We did not hear from the Board until May 3rd. The Board gave a ruling in favor of the Whitney Holding Corporation going forward.

The Comptroller then gave his final approval.

The Whitney Bank was reorganized into a holding company and a wholly owned subsidiary, and the Whitney Bank In Jefferson Parish was formed, its stock put up, subscribed, money put up, and it has been ready to do business, open its doors, except for these injunctive proceedings.

Now I'd like to get right to the point because I don't think it's come out all day, the express question that you have been asking Mr. Seaman.

Contemporaneous—we have proceeded with this program of banking which is done all over the country where there are like, similar statutes preventing branch banking. That is what holding company banking is. I would like to come back to that for a moment. But the point you are asking, why not maintain the status quo: this proceeding for injunctive relief, which was filed back on June 9th, was filed five days after a bill was introduced into the Legislature of Louisiana. We had been proceeding for two years under the law of Louisiana [70] as it was, studying this matter, with our final applications over a year ago. The Legislature was in session and on the last day of the legislative session this bill was introduced, and the following Saturday, Friday or Saturday, this injunctive proceeding was filed; a temporary restraining order or an equivalent, a

consent restraining order was obtained, and we have not been able to be heard until today. That was June 9th and this is almost thirty days later.

This is the first time we have been able to point out to the Court why it is important that the status quo not be maintained. That statute, as of last Wednesday, when we were before Judge Hart and we were resisting very strenuously that the matter should not be continued, he said to me, What can happen between last Wednesday and this Friday? I said, This statute is before the Legislature and I don't—

The Court: What statute is before the Legislature?

Mr. Monroe: The statute in Louisiana that will make it a crime, punishable by imprisonment, for a bank holding company subsidiary to open its doors for business, whether or not the Comptroller has issued a certificate. Even though he has issued the certificate it will be a crime, when that statute becomes law, to open our doors.

That statute since last Wednesday has been rushed through both Houses of the Legislature and as the last order [71] of business on July 4th that statute was passed by the Upper House, with this punitive clause in it, aimed at the Whitney National Bank situation, because it is the only corporate holding corporation in Louisiana; only can it apply to this particular Whitney Bank in Jefferson Parish. It has passed both houses and both houses recessed. It cannot become law until some time on Monday. On Monday—

The Court: I am not going to rush the matter in order to prevent an action on the part of the Louisiana or any other state legislature. I think, then, with all due respect to the legislature, I ought to maintain the status quo.

Mr. Monroe: I would like to disagree with you.

The Court: This is an argument that is addressed to the Court's discretion that would be in favor of granting an injunction.

Mr. Monroe: Well, may I talk about that, because I certainly feel quite strongly the other way.

That means that this Court is being used, when I have not been able to be heard for a period of thirty days while the law of Louisiana changes and when there is no palpable reason to deny—when we have proceeded under the cases and under the legislative history of this Act as a perfectly legal transaction. We come right up to opening our [72]



doors, and the plaintiffs in this case are the people who introduced the legislation in court, our competitors, and are changing the law after we have spent a year on this proposition and after we have totally reorganized the Whitney Bank, of which this is a part and a brand new organization.

If we are frozen by this Court from doing what would be legal, why, under those circumstances we are faced with an entirely new criminal statute in Louisiana, when you consider it.

Now, I am in court, the Whitney Bank In Jefferson is in court, and the plaintiffs can under no circumstances be damaged because the cases they cite are not applicable where the Whitney Bank, the bank proposing to open, comes in and consents, and we do consent to return the certificate completely if the position of the plaintiff is maintained. It's obvious that we are in court, you have jurisdiction over us. We do not, though, want to be faced with a new criminal statute that was not on the books when we incorporated over a month ago and when our plans—a year ago our applications were filed. We think it is totally unfair when we for a year have been working with the Federal Government on a completely open and aboveboard matter.

I went to the attorneys for the Comptroller and the attorneys for the "Fed" with the President of the Whitney [73] Bank last June and we said the first thing we want to know is whether this is legal. The Whitney Bank is a very dignified old institution in the community.

The Court: There is no doubt about that. The Whitney Bank is well known in banking circles.

Mr. Monroe: We went to the attorneys and the first thing they said, it was the legal staff of both those Government agencies——

The Court: You know, you are referring to matters that are not in the record before me, Mr. Monroe. I really want to suggest that to you.

Mr. Monroe: Excuse me, Your Honor. I am saying it is in the record because Mr. Saxon's affidavit——

The Court: I mean the fact that the legislature may pass a statute on Monday which would make it a crime for you to do what the Comptroller might permit you to do, I don't think I ought to consider it. It is not in the record, is it?

Mr. Monroe: It is the meat of this case, Your Honor, and it is put in the record——

The Court: But if it is the meat of this case, then I ought to maintain the status quo because I don't think I ought to take time by the forelock in order to forestall an action of a state legislature.

[74] Mr. Monroe: It's not forestalling, it's allowing us to do something we were entitled to do a month ago and when we have not been able to get before this Court.

The Court: There is a big question whether you are entitled to do it. That is the whole question in this case. You are begging the question.

Mr. Monroe: Yes, but on the issue of preliminary injunction the question is whether the plaintiff would be damaged, and I am saying to you, Your Honor, in all due respect, that we are here and the cases he relies on that say he cannot take the certificate back are cases where they say that he has no standing in court. I am willing to waive that standing in court so that I can proceed under the law that we operated under. I have stated that and will file an affidavit to do that. He cannot possibly be damaged. He doesn't operate in this area. He is my competitor in New Orleans. And if he is not damaged, how can this Court completely deny me an opportunity to operate legally where I have worked for a year to do so? And the only reason I am not in business is because I haven't been able to get before this Court. The suit was filed on June 9th and today—

The Court: That is pretty quick. That is much faster than most administrative agencies operate.

Mr. Monroe: Well, I understand, but a restraining [75] order is a very harsh thing, Your Honor, and it really is harsh in the equities of the people before you. You are asking us not to do something that—you are telling us that we can't do something that is legal, and while you are holding it pending final decision the whole law is to be changed.

The Court: Mr. Monroe, please do not tell me that I would prevent you from doing something that is legal. If I would prevent you from doing it it is because I have a doubt as to whether it is legal.

Mr. Monroe: I agree with Your Honor, but there is a doubt as to the legality and we presumptively have gone along in a legal way when we have been through two agencies in a completely open hearing. There is not an argument that has been made today that wasn't made to

the "Fed" in open hearing. There is not an argument that will be made that won't be made to the Fifth Circuit. The Fifth Circuit has complete control over this situation, and the Fifth Circuit if it finds—the Fifth Circuit is completely authorized to make us divest ourself of the stock.

Now, let me understand this situation. This money that was made was taken from undivided profits and an unallocated reserve account and it was completely the stockholders' money. They could have put their hands in their pockets. Over ninety per cent of the stockholders voted to take their surplus [76] funds and carry this transaction out in open meeting called according to law. Every law was complied with all the way through.

Now, I would like to point out that, therefore, they could have done this in another way just as easily and this matter can be dissolved and it will be put in the hands of the stockholders and it will be just exactly the same thing as the Camden case.

Let me point out that this matter has been passed on in the Billings case, which is cited in our brief, in Montana. Let me point out that there holding companies—

The Court: What is the Billings case?

Mr. Monroe: First National Bank v. First Bank Stock Corporation, United States District Court Montana, 197 F. Supp. 417.

The Court: Did that go up to the Court of Appeals?

Mr. Monroe: It is on appeal at the moment. I am citing it because it sets forth very well the point I wish to make.

This precise point was made to Congress in 1955, it has been in 1953. When the Holding Company Act was presented to Congress there was presented with it a bill to put the provision in the Act that holding companies could not—subsidiaries of holding companies could not be formed in [77] violation of branch banking of the state in order to make—that would be the same parallel legislation as 18(c) for actual branch banking. That matter was discussed in my brief which is on file. That matter was discussed at great length and the Senate took the provision out of the bill. The report of the Senate committee on the bill that was adopted:

"The committee decided against the inclusion in the Holding Company Act of a provision in the bill that would automatically apply state laws concerning branch

banking to bank holding company operations. The purposes of branch banking laws are not identical with the purpose of this bill to control bank holding companies. Moreover, branch banking is mostly conducted by the use of depositors' —"

The Court: Please do not quote at length.

Mr. Monroe: I'm sorry.

The Court: You see, I want to make it clear to you, gentlemen, that I am not going to pass upon or express any opinion as to the legality of this transaction on this motion. I do not think I should.

Mr. Monroe: All I am—

The Court: The only question I have to decide is whether I should maintain the status quo until the matter can [78] be decided.

Mr. Monroe: To that express point, Your Honor, I maintain that if the status quo is maintained I will be irreparably injured in that I will never be able to open unless that statute at some long future date is repealed. I can never be put back in the same position. I have proceeded in good faith for the last year. I will never be able to be put back in that position if this injunction is maintained.

On the other hand, the plaintiff can't really show any damage and he will not be damaged, if I open my bank, irreparably. There is another bank in Jefferson Parish right now that is in the same situation except for the holding company, it's owned by common stockholders, the National Bank of Commerce. Our biggest competitor in New Orleans is in Jefferson Parish right now and has been there five years under the name of the National Bank of Commerce in Jefferson Parish. It has five separate branches in Jefferson Parish, and that is the reason the Whitney Bank had to follow its competitors, because New Orleans is moving that way. And the National Bank of Commerce, a bank considerably bigger than these plaintiffs, has five banks there under the same name. The Comptroller understood that.

Now, if you maintained the injunction today and we set this up for a hearing on the merits—and you asked why [79] we did not urge, when we came into this case, that a motion immediately was set for summary judgment. It is because of the importance of the injunction to us in con-

nection with this steamroller legislation aimed directly at this particular institution. Today if we are held under this injunction we will never be able to be put back in the same position.

I repeat that I am in court. The permanent injunction can certainly take me out of Jefferson Parish.

The Court: Beg pardon?

Mr. Monroe: The permanent injunction can certainly stop me from operating, and I am perfectly willing—

The Court: The matter is not before me on an application for a permanent injunction.

Mr. Monroe: What I mean is that the application is before you.

The Court: What is before me is an application for a preliminary injunction, not a permanent injunction.

Mr. Monroe: That is true, Your Honor, but I would like to point out what the request is, just what is before you. May I read the prayer?

The Court: No; the only thing that is before me is a motion for a preliminary injunction.

Mr. Monroe: Yes, but injunction against what?

The Court: That is not a permanent injunction. [80] That would be an injunction until the case can be tried, if I grant it.

Mr. Monroe: I'm sorry, Your Honor. Before you is the request for a preliminary injunction and a permanent injunction, but the preliminary injunction restraining the Comptroller of the Currency from issuing to the Whitney National Bank or the Whitney National Bank in Jefferson Parish a certificate of authority authorizing the establishment of a new branch bank.

The Court: Yes, I know, but it is a preliminary injunction, not a permanent injunction.

Mr. Monroe: Yes, excuse me, it is a preliminary. But if that preliminary injunction issues, we are not establishing a new branch bank. All they have said is an injunction against establishing a new branch bank. If you grant it according to the letter of their prayer, they have not—I wonder if we are not entitled to go ahead and open in accordance with their prayer and I don't know whether we are entitled to have an injunction that is broader than their prayer, if you will read the prayer on the last page in the petition.

The Court: No, the motion for preliminary injunction is a motion for a preliminary injunction to restrain the defendant from issuing a certificate or certificates [S1] authorizing the establishment and operation by the Whitney National Bank of New Orleans, the Whitney Holding Corporation of New Orleans, and or Whitney National Bank of Jefferson Parish, of a new branch bank or banks.

Mr. Monroe: That is correct, Your Honor. That is not what we are doing.

The Court: I see. Well, then, you would not be harmed by an injunction, would you?

Mr. Monroe: Well, that is perfectly true, but it doesn't meet the issues square on. Obviously we don't want to have a misinterpretation of what the position—

The Court: Gentlemen, I have given too much time to this matter. I think I have the issues perfectly clear in my mind.

Did you wish to add anything, Mr. Seaman?

Mr. Seaman: Yes, Your Honor, I think I have something that may be of some importance. I believe I have something that should be said here.

The Court: You can have two or three minutes. I thought you finished your argument.

Mr. Seaman: Very short. This is not an argument, Your Honor. I want to point out that the temporary restraining order expires today and the terms of it only go to today. If Your Honor is going to take the matter under advisement

[S2] The Court: I am not.

Mr. Seaman: Excuse me, Your Honor.

The Court: I very rarely take matters under advisement. That is why I sometimes allow longer time for argument, because I like to decide questions at the end of the argument.

But I do want to ask you just one question, Mr. Merrigan. There is just one point that impresses me that Mr. Monroe made. How are you damaged by this?

Mr. Merrigan: There are three plaintiffs before this Court. Two of the plaintiffs before the Court are banks which, by state law, are strictly limited to operations wholly within the City of New Orleans.

The Court: Yes.

Mr. Merrigan: And, yet, very, very substantial parts of



their business, running into millions of dollars a year, emanate from Jefferson Parish, Louisiana.

The Court: I see. Very well. Now, then may I ask you this? While perhaps I should not concern myself with this because I am not going to impugn the motives of the actions of a legislature of a sovereign state, but were your clients instrumental in trying to get this legislation through and rush it through to make it a criminal offense to open a bank? It seems to me that is most extraordinary.

[83] Mr. Monroe: May I show you the newspaper—

Mr. Merrigan: Just a moment, Mr. Monroe. You made the charge; I would like to be heard.

The Act which has been before the Louisiana Legislature is the Uniform State Holding Company bill, which was passed in New York, New Jersey, Illinois, Indiana. It was introduced by—

The Court: I understand. Mr. Monroe states that that Act would make it a criminal offense to open the bank even if the Comptroller of the Currency grants the certificate. Is that so?

Mr. Monroe: May I answer that, Your Honor?

Mr. Merrigan: Your Honor, I don't think that the Act was meant to make it a criminal offense for them to open.

The Court: Is there a criminal provision in the legislation? You know, Mr. Merrigan, I am used to getting direct answers to my questions.

Mr. Merrigan: Yes, there is a criminal—it says, Your Honor, that upon any bank—

The Court: Let me see that criminal provision.

(The document was handed to the Court by Mr. Merrigan.)

Mr. Merrigan: It's at the bottom, Your Honor.

That legislation, Your Honor, was supported by the [84] State Banking Commissioner of Louisiana. That legislation was passed by the House of Representatives of Louisiana by a vote of eighty to sixteen and by its Senate by twenty-eight to seven. It was sponsored by the—

The Court: Were your clients instrumental in getting it through?

Mr. Merrigan: To the extent that they are members of the Louisiana State Bankers Association, which supported the bill.

The Court: I see.

Mr. Monroe: Your Honor, I would like to make a statement on that.

The Court: Yes, I will hear you.

Mr. Monroe: The President, Mr. Merrigan, of the plaintiff bank, Bank of New Orleans, advised us that he was going to introduce this bill. This bill was prepared by the attorneys sitting—it is the Uniform Act, but the Uniform Act does not have this amendment that I have read.

The Court: What is the amendment to the Uniform Act?

Mr. Monroe: The amendment is the one that makes it criminal to open.

The Court: Show me the provision.

Mr. Monroe: Here it is. It's part of the [85] plaintiffs' case, that Sub-section 5 down at the bottom.

(The document was handed to the Court by Mr. Monroe.)

Mr. Monroe: May I say this Uniform Act is not the normal Uniform Act you are familiar with, Your Honor. It's not adopted by anybody. It's just named that by a group of people.

Mr. Merrigan: I don't suppose Mr. Monroe would want to have this Court believe he hasn't had anything to do with those legislative proceedings, either.

The Court: I do not think I should engage in an unseemly race with a state legislature.

Mr. Monroe: We therefore don't believe that you should participate with it and keep us unable to go forward.

The Court: I am surprised at that provision.

I think, gentlemen, I have heard enough.

Mr. Monroe: I would like to point out to Your Honor that we have many hundreds of thousands of dollars invested in the preparation of this thing.

The Court: I understand all that. All banks have.

Mr. Monroe: And we will never have the opportunity to open this bank if the injunction is issued.

#### OPINION OF THE COURT

The Court: Without expressing any opinion as to the legality of the proposed action the Court, nevertheless, [86] is of the opinion that a sufficiently debatable question is presented to make it desirable to maintain the status quo until the action can be determined on the merits.

Accordingly, the motion for a preliminary injunction is granted.

Counsel will please submit a proposed order and proposed findings of fact and conclusions of law. In preparing the findings of fact and conclusions of law counsel will bear in mind, please, that the Court will express no views on the legality of the proposed action which it enjoins. It is basing its present decision merely on the premise that there is a sufficiently debatable question.

Mr. Merrigan: Your Honor, would you continue the restraining order in effect until we can submit these papers?

The Court: I will continue the restraining order until Monday so as to give you an opportunity to prepare the papers.

Mr. Seaman: Your Honor, there is the question of a bond. We would like to have—

The Court: What about that? I suppose that can be determined when you submit your order.

Mr. Seaman: All right, Your Honor.

Mr. Monroe: Your Honor, I won't be here at the time, I don't believe. Would you hear any discussion of that?

[87] The Court: Beg pardon?

Mr. Monroe: I am wondering, sir, if it wouldn't be well to discuss that today.

The Court: No, I will discuss it at the time you submit your order because I have got other matters waiting. You may come before me at 10 o'clock Monday morning with your proposed order.

Mr. Merrigan: Thank you, Your Honor.

(Thereupon, the hearing stood concluded.)

#### CERTIFICATE OF REPORTER

I, Gerald Nevitt Official Court Reporter, certify the foregoing 87 pages constitute the official transcript of proceedings in the stated action before Judge Holtzoff July 6, 1962.

In witness Whereof, I have affixed my signature this 13th day of July, 1962.

GERALD NEVITT.

Filed July 24, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

PLAINTIFFS' OPPOSITION TO DEFENDANT COMPTROLLER'S MOTION FOR SUMMARY JUDGMENT AND CROSS-MOTION FOR SUMMARY JUDGMENT IN THEIR FAVOR AGAINST DEFENDANT COMPTROLLER.

Come now the plaintiffs and intervening plaintiff herein, who oppose defendant Comptroller's motion for summary judgment herein, and who cross-move for summary judgment in their favor against defendant Comptroller on the following grounds:

1. There is no genuine issue as to any of the material facts upon which plaintiffs and intervening plaintiff rely in support of their cross motion, and
2. Plaintiffs are entitled to summary judgment as a matter of law.

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*Of Counsel*

Filed July 24, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

PLAINTIFFS' STATEMENT OF FACTS IN SUPPORT OF CROSS-  
MOTION FOR SUMMARY JUDGMENT

Plaintiffs, in support of their cross-motion for summary judgment herein and pursuant to Rule 9(h) of the Local Rules of this Court, hereby set forth a statement of the material facts in support of their cross-motion for summary judgment and contend there is no genuine issue as to these facts so stated:

1. The Whitney National Bank of New Orleans is the largest bank by far in the State of Louisiana. It is one of the largest financial institutions in the entire southern portion of the United States (*Defendant's Ex. 5, pg. 4*).

2. For approximately 79 years, Whitney has operated banking offices and facilities wholly within the City of New Orleans and Parish of Orleans, Louisiana (*Complaint, Para. 7; Answer of Intervening Deft., Para. 7*).

3. Through these operations, limited by law (both Federal and State) to the parish (i.e., county), in which Whitney has its main office (Orleans Parish), Whitney has grown to a position of dominance where it possesses—

approx. \$500,000,000.—in resources

approx. 13,835,000.—in undivided profits

approx. 27,200,000.—in its surplus account

approx. 39%—of the total deposits in all banks in Orleans Parish

approx. 44%—of all deposits of individuals, partnerships and corporations in the Parish.

(*Answer of Intervening Deft., Para. 7; Deft's Ex. 4, pg. 13*)

4. In fact, Whitney controls and enjoys more deposit and loan business than the second and third largest banks in New Orleans combined (*Defendant's Ex. 5, pg. 18*).

5. Furthermore, it enjoys at its banking facilities in New Orleans, deposits of individuals, partnerships and corporations emanating from the east bank of the Mississippi River in Jefferson Parish, Louisiana (i.e., beyond the limits of Orleans Parish), in an aggregate amount exceeding 30% of such deposits held by *all banks* having their head offices in the same area of said Jefferson Parish (*Defendant's Ex. 5, pg. 7*).

6. Under 12 U.S.C. §36(c) and the supporting law of Louisiana, a bank may not establish branches outside of the parish in which its head office is situated (a Louisiana "parish" is comparable to a "county" in other States). The boundaries of Orleans Parish are coterminous with the boundaries of the City of New Orleans, and consequently, banks situated in New Orleans (including national banks) may not establish branches beyond the City limits. (*Defendant's Ex. 5, pg. 5*).

7. For a long period of years, Whitney National Bank of New Orleans has been desirous of opening new branch bank facilities in Jefferson Parish, Louisiana, beyond the limits of New Orleans. It has carefully studied all of the means whereby it might avoid the prohibiting national and state statutory prohibitions against such branching, and finally decided to try a "holding company approach" (*Defendant's Ex. 4, pgs. 6-9; Plaintiffs' Ex. B, pg. 2*).

8. The President of Whitney National Bank of New Orleans stated in testimony before the Federal Reserve Board (*Defendant's Ex. 4, pgs. 6-9*):

"The 'parish' in our state is equivalent to a county.

"Under present laws in our state, the Whitney is not permitted to establish branches outside the Parish of Orleans.

"There is a rapidly growing industrial area in adjoining Jefferson Parish upriver from Orleans. . . . The industrial development, in the form of large plants, more or less extends upriver on both sides to Baton Rouge, about 80 miles. . . . There is, therefore, good reason to look forward to continued industrial growth along the river with a concentration of small industries in Jefferson Parish. . . .

"The management of the Whitney National Bank has been studying and weighing alternative methods of



entering Jefferson Parish . . . and to participate in the further growth of that area. . . .

"The officers of the Whitney National Bank determined in 1960 that the holding company was the proper solution, provided we could put the ownership of the present Whitney National Bank of New Orleans stock into such a company and, *by the use of Whitney assets, establish a bank in Jefferson Parish, which would likewise be fully owned by the holding company.*

"The Comptroller of the Currency has concurred in a program which has the effect of putting the ownership of the present Whitney National Bank stock into the Whitney Holding Corporation, through this Crescent City National Bank that was mentioned, *and to the establishment of the Whitney National Bank in Jefferson Parish with funds from the present Whitney National Bank. . . .*

"The Comptroller's action, however, is subject to the approval of this Board of the application of the Whitney Holding Corporation *to establish the wholly owned Jefferson Parish subsidiary.*" (Emphasis supplied.)

9. The President of the Whitney National Bank of New Orleans also testified as follows before the Federal Reserve Board (*Defendant's Ex. 4, pg. 23, 24*):

"If branch banking were permitted in Jefferson Parish, I wouldn't be here because it would be much simpler to have it by way of a branch. . . . But that is not possible. We see no signs of it coming about by legislative action. . . . As I say. . . *we have been unwilling to go with an affiliate which we couldn't hold onto necessarily.*

"It doesn't become a part of our organization; it is just sort of hanging loosely. You have these conflicts of interest and it is awkward.

"*The thing that makes this (the holding company approach) interesting to us is the ability to approach the branch phase of it. . . .*" (Emphasis supplied.)

10. In November, 1960, the said President of Whitney National Bank of New Orleans visited the Deputy Comptroller of the Currency to discuss ways and means by which

the Whitney National Bank of New Orleans might be able to enter Jefferson Parish. (*Defendant Comptroller's Affidavit of June 20, 1962 herein, pg. 2*)

11. He returned to the Comptroller's office in Washington in June, 1961, bringing with him the attorney for the Whitney National Bank. (*Defendant Comptroller's Affidavit, pg. 2*)

12. At the last mentioned meeting, the following is stated to have taken place (*Defendant Comptroller's Affidavit, pgs. 2, 3*):

"... the Whitney National wished to explore with the Comptroller whatever ... means were available for ... expansion into this ... area ... The formation of an affiliate bank was discussed and the formation of a holding company also discussed. The bank management felt that a holding company which would own 100% of the stock of both the old bank and the new bank would be preferable to the formation of an affiliate of which the controlling stock would be held by the same persons who control Whitney New Orleans, but which, in view of the wide stock distribution of Whitney New Orleans, would invariably have a minority of stockholders who did not own stock in both banks. The existence of the minority stock interest in each bank, which did not hold corresponding shares in the other, was considered by the Whitney management to be an undesirable situation, because it could conceivably hamper the most efficient and effective day-to-day operation of the two banks. Since the same group would be managing both banks, it was thought that situations could arise in which it would be impossible for the interests of two different groups of minority stockholders to be fully protected. For this reason, the Whitney management ... elected to use a holding company for the purpose of establishing a ... bank in Jefferson Parish." (Emphasis supplied.)

13. Having obtained from the Comptroller an informal *ex parte* approval of its desire to expand across parish lines into Jefferson Parish, the Whitney National Bank thereupon set into motion a series of intricate corporate maneu-

vers to accomplish indirectly that which was admittedly unlawful to accomplish indirectly, i.e., Whitney's expansion into Jefferson Parish. (*Defendant's Ex. 6; Plaintiff's Ex. B*).

14. Although complicated in execution, these corporate maneuvers were simply designed to draw funds from the Whitney National Bank of New Orleans, with which to establish a completely controlled banking facility in Jefferson Parish (*See Defendant's Ex. 6*):

*First:* With \$350,000. of its capital funds, Whitney National Bank created Whitney Holding Corporation, a corporation organized under the laws of the State of Louisiana.

*Second:* Solely with the \$350,000. in funds contributed by Whitney National Bank, the Whitney Holding Corporation organized Crescent City National Bank (Crescent) to which defendant Comptroller agreed to issue a national bank charter, knowing full well that Crescent would exist in name only and would never itself engage in a banking business.

*Third:* Whitney and Crescent, which latter entity never actually operated for an instant as a national bank (and Whitney Holding Corporation), entered into a consolidation or merger agreement, merging Whitney National Bank into Crescent. The name of the merged bank was then immediately changed back to Whitney National Bank of New Orleans.

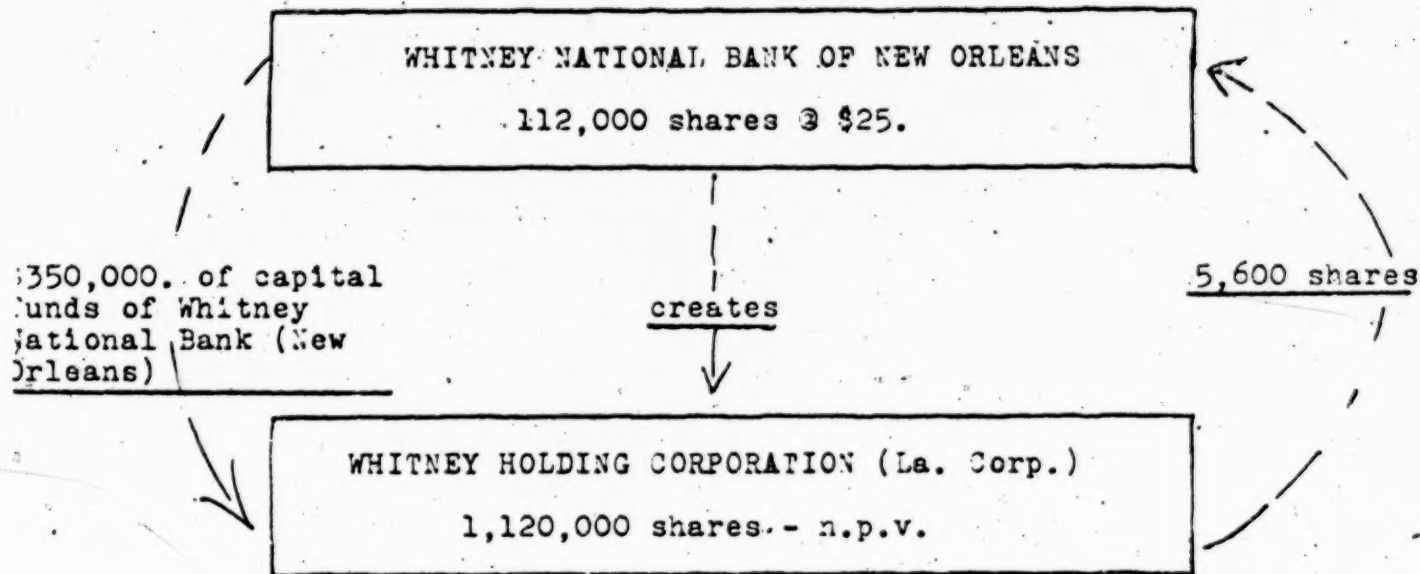
*Fourth:* Whitney National Bank of New Orleans shareholders surrendered their stock for cancellation and accepted, in exchange, Whitney Holding Corporation shares, dissenting stockholders, if any, being eliminated by the purchase of their shares under provisions of the National Banking Act.

Thus, Whitney Holding Corporation owned 100% of the stock of Whitney National Bank of New Orleans, and the stockholders of Whitney National Bank of New Orleans owned 100% of the stock of Whitney Holding Corporation.

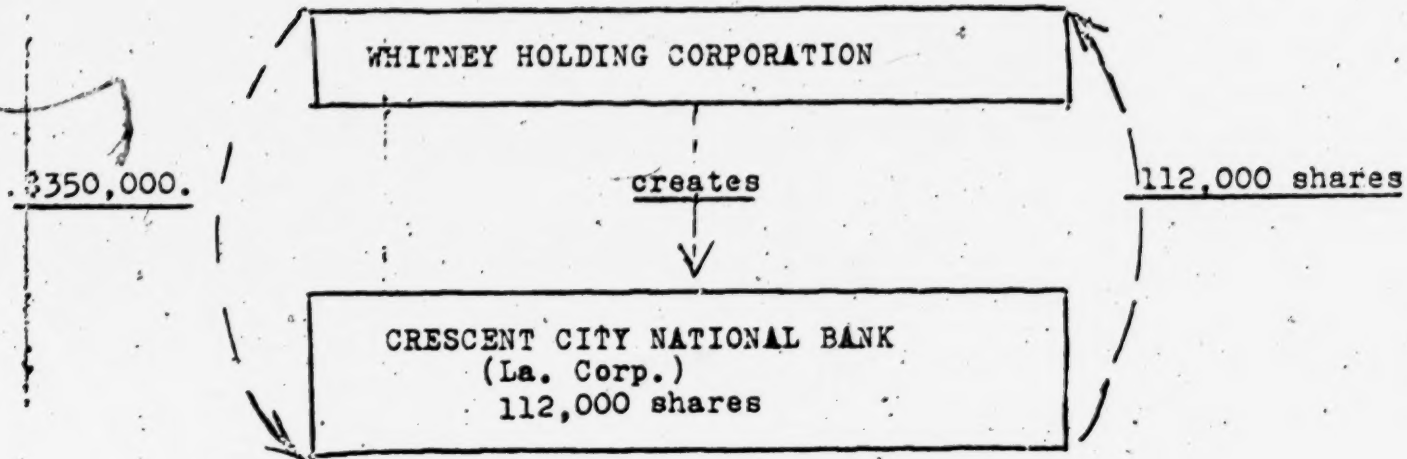
*Fifth:* Whitney National Bank of New Orleans then provided \$650,000. of its funds to Whitney Holding

Corporation "with which Whitney Holding Corporation will cause to be created the Whitney National Bank in Jefferson Parish, receiving all of its (the Jefferson Bank's) stock therefor" (*See Defendant's Ex. 6, pg. 2, Item 6*).

15. In order to assist the Court to obtain more quickly a detailed analysis of these corporate maneuvers, plaintiffs have caused to be prepared, from *Defendant's Ex. 6*, a graphic presentation thereof, which we incorporate in this Statement of Material Facts at this point.

STEP I

STEP II

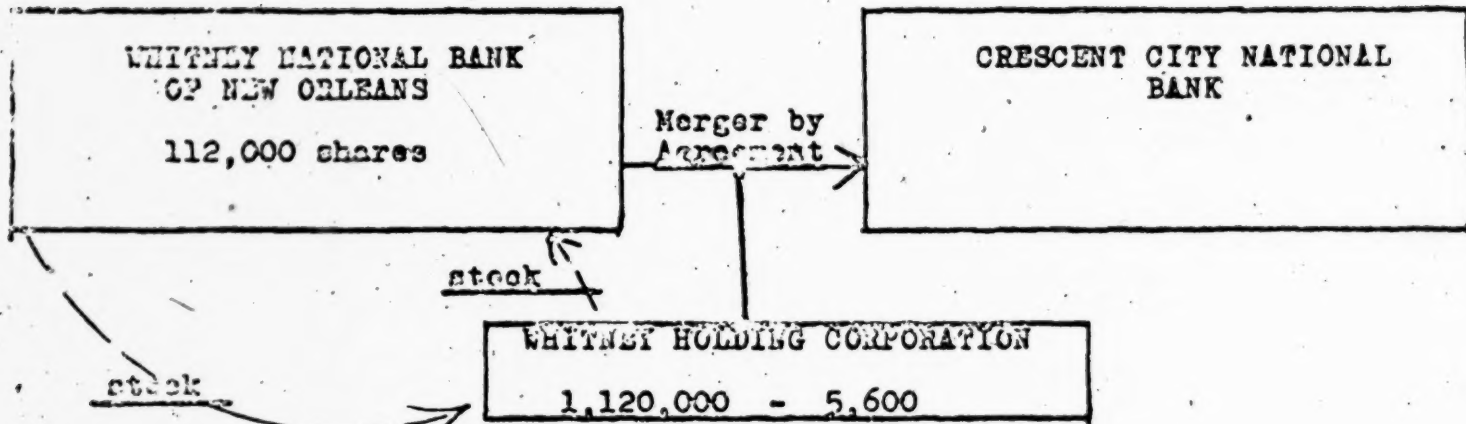


The Cresocnt City National Bank never operated as a bank; never conducted any banking business; never owned any banking assets or any other assets prior to the merger with Whitney National Bank of New Orleans described in Step 3. It was organized as a "phantom", solely to enable Whitney National Bank of New Orleans to merge with it; eliminate any dissenting stockholders of Whitney National Bank of New Orleans as part of the merger procedure. Then, the "phantom" disappears and there remains again only one bank, to wit, the old Whitney Bank of New Orleans, operating and trading under its old name.



STEP III

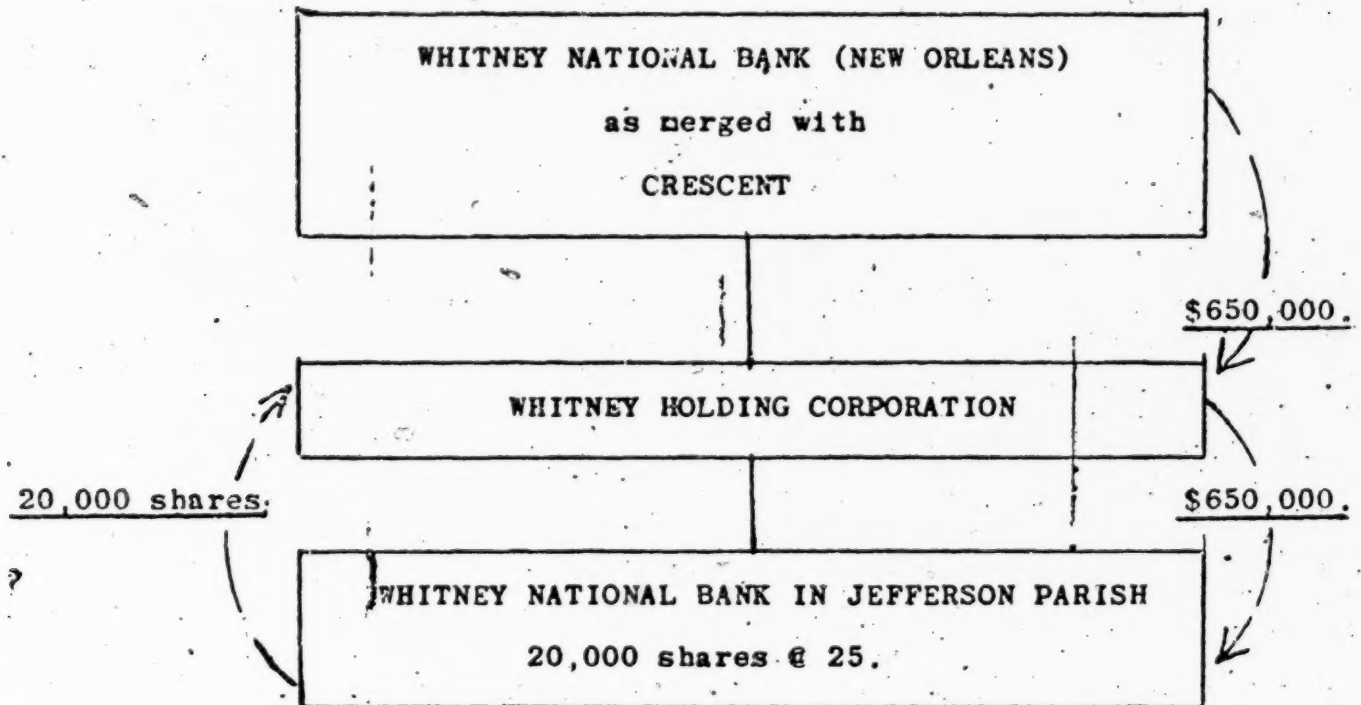
(Merger Agreement)



- 1) Whitney National Bank (New Orleans) merges with Crescent City National Bank. All assets of Whitney National Bank (New Orleans) become Crescent's. Name of Crescent City changed back to Whitney National Bank (New Orleans).

Stock of Whitney National Bank (New Orleans) 112,000 shares exchanged for 1,114,400 shares of Whitney Holding Corporation, (i.e. 1,120,000 less 5,600 already held by Whitney National Bank (New Orleans)). Thus, stockholders of Whitney National Bank (New Orleans) become 100% owners of Whitney Holding Corporation.

Under National Banking Act, any dissenting stockholder of Whitney National Bank (New Orleans) is bought out if he elects to sell instead of going along with merger.

STEP IV.

This Step, as described by President of Whitney National Bank (New Orleans), (Plaintiffs' Ex. A):

"The Crescent City National Bank (to be named Whitney National Bank of New Orleans) will provide \$650,000. Whitney Holding Corporation with which Whitney Holding Corporation will cause to be created the Whitney National Bank in Jefferson Parish."

16. When the time arrived for Whitney National Bank of New Orleans to obtain support from its stockholders for these corporate proposals, the President of said bank advised his shareholders in writing as follows (*Defendant's Ex. 6, pg. 2*):

"The basic purpose of the program is to allow the Whitney organization in New Orleans to commence a Holding Company operation controlling a bank in East Jefferson Parish to protect Whitney's competitive position in that area . . ."

17. On October 28, 1961, on a letterhead of the Whitney National Bank of New Orleans, the President of Whitney further wrote to his shareholders as follows (*Plaintiffs' Ex. B*):

"It is important to bear in mind that under the plan, all authorized shares of the Whitney Holding Corporation will be distributed to you, the stockholders of the Whitney National Bank, in exchange for your presently held stock. You will then own the same proportionate interest as you now have in the Whitney National Bank in all of the assets of the holding corporation, which then obviously includes all of the assets of the present Whitney National Bank . . ."

"We are firmly convinced, after careful consideration of the alternatives, that your common ownership of all of the Whitney National Bank of New Orleans stock and all of the stock of a Whitney National Bank in Jefferson Parish by a holding company to be owned by you is the soundest method of pooling all of the deposits of our customers and of our capital funds for their use . . . From the depositors' point of view, those in the smaller bank will be assured of the same management which directs the larger one without possibility of interruption. . . ."

"By reason of the common ownership of the two banks in a holding company there can arise no conflict of interest between them as there can between affiliated banks. There will be no minority stockholder to be affected.

"From the customer point of view there will be no conflict of interest arising out of the manner in which the customer sees fit to divide his business between

the commonly owned banks in the two parishes. He will have the full benefits of a relationship with the large bank and its officers.

"Because of the permanent relationship between the large and the smaller bank, the smaller one can operate safely with a smaller capitalization. . . .

"Finally, this holding company group broadens banking possibilities for the future. . . . It will give metropolitan New Orleans the soundest form of banking unit *which can accumulate and pool banking resources in this community where they can be used to the greatest advantage in the further development of the entire area.*" (Emphasis supplied.)

18. After its creation by Whitney National Bank of New Orleans, Whitney Holding Corporation made application to the Federal Reserve Board of Governors for approval of its acquisition of shares in the aforementioned Crescent City corporation and Whitney National Bank in Jefferson Parish referred to above. In accordance with the requirements of 12 U.S.C. §1842(b), the Board thereupon notified the Comptroller of the Currency of the application and sought his views (*Answer of Intervening Defendant herein, Para. 16, 17*).

19. Having previously given to the Whitney representatives as aforesaid, his informal approval of the plan *ex parte* as hereinabove set forth, defendant Comptroller, in three short paragraphs of a letter to the Board, gave his full approval to the proposals of the Whitney organization; and in his said letter, he failed even to mention or comment upon the legality or illegality of the proposals under 12 U.S.C. §36(c), 12 U.S.C. §1846, or *Louisiana Revised Statutes 6:54*, enacted in pursuance of said 12 U.S.C. §36(c) (*Plaintiffs' Ex. H*).

20. The Federal Reserve Board, on the other hand, took a formal, written position that the question of whether or not such proposals as Whitney's are lawful under 12 U.S.C. §36(c) or any other provision of the National Bank Act are not for the consideration of the Board, but are matters to be considered by the defendant Comptroller (*Plaintiffs' Ex. I*). In this respect, the Board ruled that these questions (*Plaintiffs' Ex. I, pg. 2*)—

"relate largely to an alleged violation of provisions of the National Bank Act, which is administered by the Comptroller of the Currency, an official of the United States Treasury Department."

21. Thus, when it rendered a decision on May 3, 1962 approving the application of Whitney Holding Corporation to proceed to acquire the shares in Crescent and Whitney Jefferson, the Federal Reserve Board, without referring to 12 U.S.C. §36(c), 12 U.S.C. 1846 or the Louisiana laws prohibiting branching beyond parish lines, candidly stated (*Defendant's Ex. 5, pg. 6*):

"The stated purpose of the proposed holding company system is to enable an organization centered about Whitney New Orleans to provide banking services not only through its existing 12 offices within the City of New Orleans but also through offices in the East Bank of Jefferson Parish. The holding company system will be under the direction of the present executive management of Whitney New Orleans; in fact, for present purposes the holding company itself is simply the means by which Whitney banking offices may be established and operated in East Bank. Consequently, the character of the management and the prospects of the applicant and its two proposed subsidiary banks may be evaluated largely on the basis of the financial history and condition, character of management, and prospects of Whitney New Orleans.

"The financial history of Whitney New Orleans has been satisfactory. The condition of that bank is sound and its management is regarded as satisfactory. Accordingly, it is believed that the management of Applicant and Whitney Jefferson will be satisfactory and the prospects of the holding company, which depend principally upon the prospects of Whitney New Orleans, are favorable."

22. In a dissenting opinion from the aforementioned ruling of the Federal Reserve Board, it was stated (*Defendant's Ex. 5, pg. 18, 21, 22*):

"Whitney National Bank of New Orleans is the largest banking institution of the City of New Orleans and

the State of Louisiana. . . . The proposal before the Board of Governors would place control of this bank in Whitney Holding Corporation and thereby would overcome the effect of the branch banking laws of Louisiana, which prevent Whitney from establishing any offices outside of Orleans Parish (the City of New Orleans). In other words, by this means, the Whitney banking organization would escape the legal limitations that now permit it to have offices only within the City of New Orleans. . . .

"The proposal before the Board . . . would also . . . provide a vehicle for enhancing the existing high degree of banking concentration in the area and would permit a centralization of banking power of major proportions in individual hands, to a degree that, to my knowledge, is without parallel in the American banking system. . . ." (Emphasis supplied.)

23. The aforementioned ruling by the Federal Reserve Board is subject to judicial review by the Fifth Circuit Court of Appeals (12 U.S.C. §1848). Upon such review, the Court has jurisdiction

"to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper."

A petition to review the Board's ruling upon the Whitney application is presently pending in the Fifth Circuit (*Bank of New Orleans and Trust Company v. Board of Governors of the Federal Reserve System*, No. 19788, C.C.A. 5).

24. Defendant Comptroller's predecessor in office originally took the position that he would not issue any approval of or certificate for the establishment and operation of the Whitney National Bank in Jefferson Parish until final approval of all prior steps in the Whitney plan had been obtained "as required by the Bank Holding Company Act" (*Affidavit of Defendant Saxon*, pg. 4, Para. 6).

25. However, before such approval could become final under that Act (12 U.S.C. §1848), or under the Regulations of the Federal Reserve Board itself, Defendant Comptroller issued on May 18, 1962, his approval of the consum-



mation of the last steps required to enable the Whitney organization to establish and open Whitney National Bank in Jefferson Parish (*Plaintiffs' Ex. C*).

26. Defendant Comptroller thereupon announced that, unless this Court issued an injunction restraining him from issuing a certificate authorizing the establishment and commencement of business by Whitney National Bank in Jefferson Parish, he considered it his immediate "duty . . . to issue the Certificate of Authority to Whitney Jefferson . . ." (*Affidavit of Defendant Saxon, pg. 7, Para. 12*).

27. The Attorney General of Louisiana, on June 13, 1962, issued a written opinion to the State Bank Commissioner of Louisiana, advising (*Plaintiffs' Ex. E*):

"It is the opinion of this office, therefore, that a bank holding company may not circumvent the branch bank laws of our State by the acquisition of a controlling interest in a subsidiary which is located in a parish other than the domicile of the parent company."

28. Meanwhile, Whitney National Bank caused to be printed checks and letterheads for the proposed Whitney National Bank in Jefferson Parish, which show the name "Whitney National Bank" in very large, bold letters; and the words "in Jefferson Parish" in such tiny caps that they do not seem even to constitute part of the name of the proposed Jefferson bank office. Specimens of such checks, made available by defendants herein, are inserted here for the Court's consideration.

29. The Complaint herein was filed on June 9, 1962. Defendant Comptroller, upon being advised of the filing or impending filing, voluntarily agreed to withhold issuance of his Certificate of Authority to Whitney Jefferson until the Motion for Preliminary Injunction could be determined.

30. On June 27, 1962, when defendant Comptroller refused voluntarily to withhold issuance of the Certificate any longer, Judge Hart, after hearing, granted a Temporary Restraining Order directing the Comptroller to withhold his certificate until July 6, 1962. (See Transcript of Proceedings before Judge Hart filed herewith.)

31. On July 6, 1962, after long oral argument, Judge Holtzoff granted plaintiffs' motion for a preliminary injunction. (See Transcript of Proceedings of July 6, 1962 before Judge Holtzoff filed herewith.)

32. On July 10, 1962, Judge Holtzoff signed the Preliminary Injunction herein.

33. The Federal Bank Holding Company Act (12 U.S.C. §1846) provides:

*"Reservation of rights to States*

"The enactment by the Congress of this chapter shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies, and subsidiaries thereof."

34. On July 10, 1962, the Governor of Louisiana signed into law Act No. 275 of (the 1962 Regular Session of the Louisiana Legislature (Certified Copy of said Act is filed herewith as *Plaintiffs' Ex. L*).

Said Act, designated "Emergency Legislation" by the Governor, went into effect when signed on July 10, 1962 and it "prohibits the formation of new bank holding companies", and provides for the "control of the future expansion of existing bank holding companies and of their subsidiaries".

Section 3 of said Act provides:

"It shall be unlawful . . . (5) for any bank holding company or subsidiary thereof to open for business any bank not now opened for business, whether or not, a charter, permit, license or certificate to open for business has already been issued."

35. Article 3, Section 27 of the Louisiana Constitution provides that this Act, certified by the Governor of Louisiana as "emergency legislation", "shall become effective immediately upon approval by the Governor", which was on July 10, 1962 (*Plaintiffs' Ex. M*).

36. During the proceedings before Judge Holtzoff on July 6, 1962, the attorney for Whitney National Bank in Jefferson Parish, the intervening defendant herein, made the following statements on the record with reference to this Louisiana Statute (and the Court's statements, of course, are self-explanatory), at pages 70, 71 of the transcript:

"The Court: What statute is before the Legislature?

"Mr. Monroe: The statute in Louisiana that will

make it a crime, punishable by imprisonment, for a bank holding company subsidiary to open its doors for business, whether or not the Comptroller has issued a certificate. Even though he has issued the certificate it will be a crime, when the statute becomes law, to open our doors.

"That statute since last Wednesday has been rushed through both Houses of the Legislature and as the last order of business on July 4th that statute was passed by the Upper House, with this punitive clause in it, aimed at the Whitney National Bank situation, because it is the only corporate holding corporation in Louisiana; only can it apply to this particular Whitney Bank in Jefferson Parish. It has passed both houses and both houses recessed. It cannot become law until some time on Monday. . . .

"*The Court*: I am not going to rush the matter in order to prevent an action on the part of the Louisiana or any other state legislature. I think, then, with all due respect to the legislature, I ought to maintain the status quo. . . . This is an argument that is addressed to the Court's discretion that would be in favor of granting an injunction. . . ."

And at page 73:

"*Mr. Monroe*: It (the Louisiana statute) is the meat of this case, Your Honor. . . .

"*The Court*: But if it is the meat of this case, then I ought to maintain the status quo because I don't think I ought to take time by the forelock in order to forestall an action of a state legislature. . . ."

And, finally, at page 85:

"*The Court*: I do not think I should engage in an unseemly race with a state legislature. . . .

"*Mr. Monroe*: We therefore don't believe that you should participate with it and keep us unable to go forward. . . . I would like to point out to Your Honor that we have many hundreds of thousands of dollars invested in the preparation of this thing. . . .

"*And we will never have the opportunity to open this bank if the injunction is issued.*" (Emphasis supplied.)

37. Plaintiff, Bank of New Orleans and Trust Company, is a banking corporation chartered by the State Bank Commissioner of Louisiana to conduct the business of banking solely and exclusively at and through a main office and bank branches, restricted by *Louisiana R.S. 6:54* to the Parish of Orleans, and is prohibited by Louisiana law from establishing any branch or branches in Jefferson Parish, Louisiana (*Affidavit of Livaudais, Ex. Vice Pres. of said plaintiff*).

However, as of June 21, 1962, said plaintiff enjoyed at its offices so restricted to Orleans Parish, checking accounts of depositors who reside in or whose businesses are located in Jefferson Parish amounting to approximately \$2,029,000., and these represented deposits by 2,812 such individuals and businesses. Said deposits were equal to 12.3% of the total checking accounts deposits enjoyed by said plaintiff on that date (*Livaudais Affidavit, pg. 2*).

Furthermore, on June 2, 1962, said plaintiff's "total amount of commercial loans to persons residing in or businesses located in Jefferson Parish exceeding \$10,000. amounted to approximately \$3,110,000." or "approximately 15% of the total amount of commercial loans exceeding \$10,000. of all customers of the Bank on that date". The foregoing figures are limited to commercial loans exceeding \$10,000., and in addition thereto, the said plaintiff has outstanding a large volume of commercial loans to persons and businesses in Jefferson Parish in amounts less than \$10,000. (*Livaudais Affidavit, pg. 2*).

38. Plaintiff, Bank of Louisiana in New Orleans, is a banking corporation chartered by the State Bank Commissioner of Louisiana to conduct the business of banking solely and exclusively at and through a main office and bank branches restricted by *Louisiana R.S. 6:54* to the Parish of Orleans and is prohibited by Louisiana law from establishing any branch or branches in Jefferson Parish, Louisiana. (*Affidavit of Clyde C. Wheeler, Asst. Vice-President of said plaintiff*.)

However, as of July 19, 1962, said plaintiff enjoyed at its offices so restricted to Orleans Parish, accounts of "demand and time depositors who reside in or whose businesses are located in Jefferson Parish amounting to approximately \$502,000., represented by deposits by 621 individuals and businesses, (which) accounted for approxi-

mately 8.6% of the total demand and time deposits of customers on that date". "In addition to checking accounts, the Bank serves a very large number of individuals and businesses who reside in or are located in Jefferson Parish on installment loans." (*Wheeler Affidavit*, pg. 2)

39. Plaintiff, Guaranty Bank & Trust Company, is a banking corporation chartered by the State Bank Commissioner of Louisiana to conduct the business of banking solely and exclusively at and through a main office and bank branches limited by *Louisiana R.S. 6:54* to the Parish of Lafayette, Louisiana, and prohibited by Louisiana law from establishing any branch or branches in Jefferson Parish, Louisiana (*Affidavit of R. J. Castille, President of said Plaintiff*).

Said plaintiff "has customers, depositors and borrowers who reside or have . . . businesses situated in Jefferson Parish, Louisiana, and these customers borrow money and maintain accounts with" the said plaintiff. In addition, said plaintiff "makes commercial loans to some of its customers who have places of business in Jefferson Parish, Louisiana, and it follows necessarily that the Guaranty Bank & Trust Company of Lafayette, Louisiana would be damaged if the Whitney National Bank of New Orleans, the largest bank in the State, were permitted to open branch banking facilities, through one device or another, in Jefferson Parish, Louisiana" (*Affidavit of Castille*, pg. 2).

Respectfully submitted,

EDWARD L. MERRIGAN,  
Attorney for Plaintiffs

July 24, 1962

WADE O. MARTIN, JR.

*I, the undersigned Secretary of State, of the State of Louisiana*

do hereby certify that the annexed and following five (5) pages constitute a true and faithful photographic copy of House Bill No. 1221, which has been designated as Act No. 275 of the 1962 Regular Session of the Louisiana Legislature, as shown by comparison with the original document on file in the archives of this office.

*In testimony whereof, I have hereunto set  
my hand and carried the Seal of my Office  
to be affixed at the City of Baton Rouge on,  
this, the 12th day of July, A. D. 1962*



WADE O. MARTIN, JR.

*I the undersigned Secretary of State, of the State of Louisiana*

do hereby certify that the annexed and following five (5) pages  
constitute a true and faithful photographic copy of House Bill  
No. 1221, which has been designated as Act No. 275 of the 1962  
Regular Session of the Louisiana Legislature, as shown by  
comparison with the original document on file in the archives  
of this Office.

*In testimony whereof, I have hereunto set  
my hand and added the Seal of my Office  
to be affixed at the City of New Orleans  
this, the 12th day of July, A. D. 1962*

*Wade O. Martin, Jr.*  
Secretary of State

*Wade O. Martin, Jr.*

Act No. 275

HOUSE BILL NO. 1221

BY: MR. ANGELLE  
(BY REQUEST)

AN ACT

To define the bank holding company, to prohibit the formation of new bank holding companies, and to control the future expansion of existing bank holding companies and of their subsidiaries.

=====ORIGINATED=====

=====IN THE=====

House of Representatives

ORIGINATED

IN THE

# House of Representatives

Certified by the Governor as  
Emergency Legislation.

*W. Flexx Lee*

Clerk of the House of Representatives

*July 4, 1962*  
date

Wade O. Martin, Jr.  
Secretary of State

*Rec'd by the Governor  
July 10, 1962 at 2:25 PM  
D. Andrews*

Received by Secretary of State

this *11th* day of *July*, 19 *62*

*Wade O. Martin, Jr.*  
Secretary of State

HOUSE BILL No. 1221

By: Mr. Angelle  
(By Request)

## AN ACT

To define the bank holding company, to prohibit the formation of new bank holding companies, and to control the future expansion of existing bank holding companies and of their subsidiaries.

Be it enacted by the Legislature of Louisiana:

## Section 1. Declaration of Policy.

It is declared to be the policy of this State to protect and to foster the growth of the independent unit bank, and institution whose ownership and origins are grounded in the local community and whose activities are bound up with local economic and social organizations; to prevent the undesirable concentration of control in the banking field to the detriment of the public interest; to insure effective competition among all banking institutions; and, to accomplish these objectives by prohibiting the formation of new banking holding companies and the acquisition of control by whatever means of additional banking institutions by existing bank holding companies and by their subsidiaries.

## Section 2. Definitions.

(a) "Bank holding company" means any company, foreign or domestic, including a bank, (1) which directly or indirectly owns, controls, or holds with power to vote, 25 per centum or more of the voting shares of any bank, or (2) which controls in any manner the election of a majority of the directors of any bank, or (3) for the benefit of whose shareholders or members 25 per centum or more of the voting shares of any bank or a bank holding company is held by trustees; and for the purposes of this Act, any successor to any such company shall be deemed to be a bank holding company from the date as of which such predecessor company became a bank holding company. Notwithstanding the foregoing, (A) no company shall be a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities and which are held only for such period of time as will permit the sale thereof upon a reasonable basis, and (B) no company formed for the sole purpose of participating in a proxy solicitation shall be a bank holding company by virtue of its control of voting rights of shares

acquired in the course of such solicitation (C) nor shall this act apply to shares acquired by a bank holding company which is a bank, or by any banking subsidiary of a bank holding company, in satisfaction of a debt previously contracted in good faith, but such bank holding company or such subsidiaries shall dispose of such shares within a period of two years from the date on which they were acquired or from the date of enactment of this Act, whichever is later (D) nor shall this Act apply to shares which are held or acquired by a bank holding company which is a bank or by any banking subsidiary of a bank holding company, in good faith in a fiduciary capacity; except where such shares are held for the benefit of the shareholders of such bank holding company or any of its subsidiaries, or to shares which are of the kinds and amounts eligible for investment by National banking associations under the provisions of section 5136 of the Revised Statutes, or to shares lawfully acquired and owned prior to the date of enactment of this Act by a bank which is a bank holding company, or by any of its wholly owned subsidiaries.

(e) "Company" means any corporation, business trust, partnership, association, or similar organization doing business in this State; but shall not include any corporation the majority of the shares of which are owned by the United States or by any State,

(f) "Bank" means any commercial bank, savings bank, trust company or similar organization doing business in this State.

(g) "Subsidiary," with respect to a specified bank holding company, means (1) any company 25 per centum or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is owned or controlled by such bank holding company; or (2) any company the election of a majority of whose directors is controlled in any manner by such bank holding company; or (3) any company 25 per centum or more of whose voting shares are held by trustees for the benefit of the shareholders or members of such bank holding company.

(h) The term "successor" shall include any company which acquires directly or indirectly from a bank holding company shares of any bank, when and if the relationship

between such company and the bank holding company is such that the transaction effects no substantial change in the control of the bank or beneficial ownership of such shares of such bank.

### Section 3. Prohibitions upon Acquisition of Bank Shares or Assets.

It shall be unlawful (1) for any action to be taken which results in a company or a bank becoming a bank holding company as defined in this Act; (2) for any bank holding company or subsidiary thereof to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company or subsidiary will directly or indirectly own or control more than 25 per centum of the voting shares of such bank; (3) for any bank holding company or subsidiary thereof to acquire all or substantially all of the assets of a bank; or (4) for any bank holding company or subsidiary thereof to merge or consolidate with any other bank holding company or any subsidiary thereof; (5) for any bank holding company or subsidiary thereof to open for business any bank not now opened for business, whether or not, a charter, permit, license or certificate to open for business has already been issued. Notwithstanding the foregoing, this prohibition shall not apply to additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition.

### Section 4. Penalties.

Any bank, bank holding company, company, or any subsidiary of any of them which willfully violates any provision of this Act, or any regulation or order issued by the State Bank Commissioner pursuant thereto, shall upon conviction be fined not less than \$500 nor more than \$1,000 for each day during which the violation continues. Any individual who willfully participates in a violation of any provision of this Act shall upon conviction be fined not less than \$1,000 nor more than \$5,000 or imprisoned not more than one year, or both.

### Section 5. Administration.

The State Bank Commissioner shall administer and carry out the provisions of this Act and may issue such regula-



tions and orders as may be necessary to discharge this duty and to prevent evasions of the Act.

#### Section 6. Savings Clause.

Nothing herein contained shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of any existing law, nor shall anything herein contained constitute a defense to any action, suit or proceeding pending or hereafter instituted on account of any prohibited antitrust or monopolistic act, action, or conduct.

#### Section 7. Severability.

If any provision of this Act or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

#### Section 8. Repeal.

All laws or parts of laws in conflict herewith are hereby repealed.

[Copy Illegible],

*Speaker of the House of Representatives.*

[Copy Illegible],

*Lieutenant Governor and President of the Senate.*

**JIMMIE H. DAVIS.**

*Governor of the State of Louisiana.*

Approved: July 10, 1962 at 4:15 P.M.

## PLAINTIFFS' EXHIBIT M

## LEGISLATIVE DEPARTMENT

## Art. 3 § 26

## Notes of Decisions

## 1. Promulgation, judicial inquiry as to

The fact whether or not the law has been duly promulgated may be within the province of the judicial, but whether or not it went regularly through all the stages necessary for its passage as a law, up to the promulgation, is not a subject of judicial inquiry. *Whited v. Lewis*, 1873, 25 La. Ann. 568.

## § 27. Effective date of laws; publication

Section 27. All laws enacted shall go into effect at twelve o'clock, noon, on the twentieth day after the Legislature shall have adjourned. This provision shall not apply to the general appropriation Act or the Act appropriating money for the expenses of the Legislature, or to any Act the necessity for the immediate passage of which shall have been certified to the Legislature by the Governor, or the acting Governor, while the Legislature is in session, and any such Act so certified shall become effective immediately upon approval by the Governor. All Acts shall be published in the official journal without delay after passage.

The Legislature shall provide for the publication of said Acts in book form and shall fix the time limit for their delivery to the Secretary of State. In the publication of Acts of the Legislature, the signatures of the Governor and presiding officers of the two houses shall be omitted, but the date of approval of the Acts, or of their passage over the Governor's veto, or of Acts becoming law without the Governor's signature, shall be published at the bottom of each Act. (As amended Acts 1936, No. 70, adopted Nov. 3, 1936.)

### Historical Note

#### 1936 Amendment:

The 1936 amendment added the provisions relating to acts certified to the legislature by the governor or acting governor as necessary for immediate passage.

#### Earlier Constitutions:

1913, arts. 42, 165.  
 1898, arts. 42, 165.  
 1879, arts. 40, 154.  
 1868, art. 109.  
 1864, art. 108.  
 1852, arts. 100, 129.  
 1845, arts. 103, 132.  
 1812, art. 6, § 15.

### Cross References

Adjournment of House and Senate, see art. 3, § 20.  
 Bills and resolutions,

Indorsement by secretary of state, see LSA-R.S. 43:24.  
 Register of resolutions, see LSA-R.S. 43:24.  
 Signing of bills by Governor, see art. 5, § 15.

Certification of documents, see LSA-R.S. 49:204.

Delivery of bills to Governor, see art. 3, § 26.

Deposit of laws with secretary of state, see art. 5, § 15.

Filed July 24, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
LOUISIANA

Civil Action No. 1857-62

[Title omitted]

AFFIDAVIT IN SUPPORT OF PLAINTIFF, BANK OF LOUISIANA IN  
NEW ORLEANS

STATE OF LOUISIANA,  
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared:

CLYDE C. WHEELER a person of the full age of majority and a resident of the Parish of Orleans, who after being by me, Notary, first duly sworn, did depose and say:

That he is the Assistant Vice-President of the plaintiff, Bank of Louisiana in New Orleans, and he submits this affidavit in support of the pending motion for preliminary injunction in the above entitled cause:

That he understands that it has been asserted in this action that party-plaintiff, Bank of Louisiana in New Orleans, would suffer no damage to its business, its properties or its profits if the defendant, Comptroller of the Currency, issued a certificate to the Whitney National Bank of New Orleans to establish banking facilities in Jefferson Parish, Louisiana. Affiant states that such assertions are untrue and incorrect for the following reasons:

Plaintiff, Bank of Louisiana in New Orleans, maintains its principal office in the Parish of Orleans, State of Louisiana, and is restricted by State law from establishing banking facilities in Jefferson Parish or any other Parish in the State of Louisiana. Notwithstanding the fact that this plaintiff's banking facilities are limited to the Parish of Orleans, a very large number of the plaintiff's customers, depositors and borrowers reside in and are principally located in Jefferson Parish, Louisiana. Affiant has re-

viewed the ledgers of the Bank of Louisiana in New Orleans and:

1. As of July 19, 1962 the total amount of demand and time depositors who reside in or whose businesses are located in Jefferson Parish amounted to approximately \$502,000.00, and represented deposits by 621 individuals and businesses and accounted for approximately 8.6% of the total demand and time deposits of customers on that date. In addition to checking accounts the Bank serves a very large number of individuals and businesses who reside in or are located in Jefferson Parish on installment loans.

Accordingly, should the Comptroller of the Currency authorize the Whitney National Bank of New Orleans, the largest bank in the State, with combined resources of almost one-half billion dollars, to open branch banking facilities through one device or another in Jefferson Parish, plaintiff would necessarily suffer severe loss of loans, deposits and other business and would sustain damage to its business and profits. Additionally, if the Comptroller is permitted to issue the certificate of authority, as he proposes to do unless enjoined, this plaintiff would have no adequate remedy at law and would be unable to defend itself against the diversion to and appropriation by said Whitney National Bank of a substantial part of the banking business and services now enjoyed by the Bank of Louisiana in New Orleans.

CLYDE C. WHEELER.

Sworn to and subscribed before me this 20th day of July, 1962.

*Notary Public.*

Filed July 24, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

AFFIDAVIT IN SUPPORT OF PLAINTIFF, GUARANTY BANK &  
TRUST COMPANY, LAFAYETTE, LOUISIANA

STATE OF LOUISIANA,  
Parish of Lafayette, ss:

Before me, the undersigned authority, personally came and appeared:

R. J. CASTILLE a person of the full age of majority and a resident of the Parish of Lafayette, Louisiana, who, after being by me, Notary, first duly sworn, did depose and say:

That he is President of the plaintiff, Guaranty Bank & Trust Company of Lafayette, Louisiana, and he submits this affidavit in support of the pending motion for preliminary injunction in the above-entitled cause.

That he understands that it has been asserted in this action that the Guaranty Bank & Trust Company of Lafayette, Louisiana, would suffer no damage to its business, its properties or its profits if the defendant, Comptroller of Currency, issued a certificate to the Whitney National Bank of New Orleans to establish banking facilities in Jefferson Parish, Louisiana.

Plaintiff, Guaranty Bank & Trust Company of Lafayette, Louisiana, maintains its principal offices and banking branches entirely within the Parish of Lafayette, Louisiana and is restricted by State law from establishing banking facilities in Jefferson Parish, Louisiana or any other parishes in the State of Louisiana.

Plaintiff, Guaranty Bank & Trust Company of Lafayette, Louisiana, has customers, depositors and borrowers who reside or have branches of their businesses situated in Jefferson Parish, Louisiana, and these customers borrow money and maintain accounts with the Guaranty Bank &



Trust Company of Lafayette, Louisiana. Plaintiff, Guaranty Bank & Trust Company of Lafayette, Louisiana, makes commercial loans to some of its customers who have places of business in Jefferson Parish, Louisiana, and it follows necessarily that the Guaranty Bank & Trust Company of Lafayette, Louisiana, would be damaged if the Whitney National Bank of New Orleans, the largest bank in the State, were permitted to open branch banking facilities, through one device or another, in Jefferson Parish, Louisiana.

Additionally, if the Comptroller of the Currency is permitted to issue the certificate of authority, this plaintiff would have no adequate remedy at law.

R. J. CASTILLE.

Sworn to and subscribed before me this 19th day of July, 1962.

JAMES W. BEAN,  
*Notary Public.*

Filed August 10, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

OPPOSITION OF DEFENDANT COMPTROLLER OF THE CURRENCY  
TO PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT,  
AND FURTHER CROSS-MOTION OF SAID DEFENDANT TO DISMISS

Comes now the defendant Comptroller of the Currency, by his undersigned counsel, and opposes plaintiffs' cross-motion for summary judgment herein on the ground that plaintiffs are not entitled to judgment as a matter of law. Said defendant's pending motion for summary judgment should be granted and plaintiffs' cross-motion should be denied.

The defendant Comptroller of the Currency further cross-moves for an order dismissing the complaint and this action on the grounds (1) that the complaint fails to state a

claim upon which relief can be granted, (2) that the Court lacks jurisdiction over the subject matter, (3) that plaintiffs have failed to join (and cannot join) indispensable parties, (4) that plaintiffs have failed to exhaust their administrative remedies, and (5) that plaintiffs lack standing to sue. This further cross-motion to dismiss is supplemental to the pending motion for summary judgment and is intended as an alternative request for relief.

/s/ JOSEPH D. GUILFOYLE,  
*Acting Assistant Attorney General.*

/s/ DONALD B. MACGUINEAS,  
/s/ DAVID V. SEAMAN,  
*Attorneys, Department of Justice  
Attorneys for Defendant Comptroller  
of the Currency.*

*Of Counsel:*

DAVID C. ACHESON,  
*United States Attorney.*

Filed August 10, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

STATEMENT OF DEFENDANT COMPTROLLER OF THE CURRENCY  
IN RESPONSE TO THE STATEMENT OF FACTS SUPPORTING  
PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

As required by Local Civil 9(h), plaintiffs have filed a statement of the material facts as to which they contend there is no genuine issue. We agree that there are no disputed issues of fact in this case. We therefore do not contest plaintiffs' statement of material facts except as to the wording of the following paragraphs:

7. We deny the truth of the matters set forth in paragraph 7, except when stated as follows: "For a long period

of years, the management of Whitney New Orleans has desired to expand banking operations in Jefferson Parish. It has carefully studied all of the methods by which such operations might be legally conducted and has decided to utilize the device of a bank holding company."

13. We deny the truth of the matters set forth in paragraph 13, except when stated as follows: "Having obtained from the Comptroller informal approval of its desire to expand banking operations in Jefferson Parish, the Whitney management thereupon set into motion steps in a corporate reorganization, designed to accomplish such expanded operations through an independent bank controlled by a regulated bank holding company."

24. We deny the truth of the matters set forth in paragraph 24, except when stated as follows: "By letters dated October 3, 1961, former Comptroller Gidney gave preliminary approval to the formation of Crescent City National Bank, and the formation of Whitney Jefferson subject to the grant of the approval of the Federal Reserve Board to the formation of the holding company for the purpose of acquiring the new Whitney New Orleans and Whitney Jefferson, as required by the Bank Holding Company Act of 1956."

25. We deny the truth of the matters set forth in paragraph 25, except when stated as follows: "On May 3, 1962, the Board of Governors of the Federal Reserve Board rendered its decision and order approving the application of Whitney Holding Corporation for permission to become a bank holding company by acquiring the stock of the Crescent City and Whitney Jefferson. On May 18, 1962, the Comptroller issued his approval to the consolidation of Whitney New Orleans with Crescent City under the title of Whitney National Bank of New Orleans. The final steps for the completion of the formation of Whitney Holding Corporation and the Crescent City National Bank and the consolidation were all accomplished on May 24, 1962, and the new bank in New Orleans commenced business on May 25, 1962."

26. We deny the truth of the matters set forth in paragraph 26, except when stated as follows: "Following completion of the organization of Whitney Jefferson by the Whitney Holding Corporation, the Comptroller considered it to be his duty to issue a Certificate of Authority to Whitney Jefferson, since the organizers had faithfully

executed all steps and fulfilled all requirements necessary for the organization of a new bank."

/s/ JOSEPH D. GUILFOYLE,  
*Acting Assistant Attorney General.*

/s/ DONALD B. MACGUINEAS,  
/s/ DAVID V. SEAMAN,  
*Attorneys, Department of Justice  
Attorneys for Defendant Comptroller  
of the Currency.*

*Of Counsel:*

DAVID C. ACHESON,  
*United States Attorney.*

Filed August 10, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

SUPPLEMENTARY AFFIDAVIT OF JAMES J. SAXON, COMPTROLLER  
OF THE CURRENCY

James J. Saxon, being first duly sworn, deposes and says:

1. The purpose of this affidavit is to supplement my earlier affidavit dated June 20, 1962, heretofore filed in this matter.

2. I have reviewed the contents of my affidavit of June 20, 1962, and I now specifically reaffirm each and every statement contained therein. Subsequent to the preparation thereof, certain developments have occurred, to which I respectfully invite the attention of the Court.

3. On June 25, 1962, by letter addressed to Edward L. Merrigan, Esquire, the Board of Governors of the Federal Reserve System denied the Petition for Reconsideration, Revocation, and Rehearing filed on behalf of the plaintiffs in this action of the Board's Order of May 3, 1962, permitting Whitney Holding Company to become a bank holding company by acquiring substantially all of the voting stock

of a bank in New Orleans, Louisiana, and a bank in Jefferson Parish, Louisiana. This letter has been filed as Plaintiffs' Exhibit 1 to the affidavit of Lawrence A. Merrigan, dated June 26, 1962.

4. I am advised that review of the Board's Order of May 3, 1962, is presently being sought before the United States Court of Appeals for the Fifth Circuit.

5. On July 10, 1962, the Governor of the State of Louisiana approved Act No. 275, entitled "An Act to define the bank holding company, to prohibit the formation of new bank holding companies, and to control the future expansion of existing bank holding companies and of their subsidiaries."

6. Upon consideration of these subsequent developments, and after careful examination of the Louisiana statute, I have concluded that there has occurred no reason to alter the Comptroller's prior determination that a certificate of authority should be issued to Whitney National Bank in Jefferson Parish, pursuant to 12 U. S. C. § 27.

7. Accordingly, if the preliminary injunction entered herein is vacated, and if Whitney National Bank in Jefferson Parish so requests, inasmuch as upon a careful examination of the facts within my knowledge it appears that such association is lawfully entitled to commence the business of banking, it is my present intention to issue such certificate. For the information of the Court, there is appended hereto and designated as Defendant's Exhibit 7 a specimen of such certificate.

/s/JAMES J. SAXON.

Subscribed and sworn to before me, this 9th day of August 1962.

HELEN CRIST CRAVER,  
*Notary Public*

My Commission Expires Sept. 30, 1966.

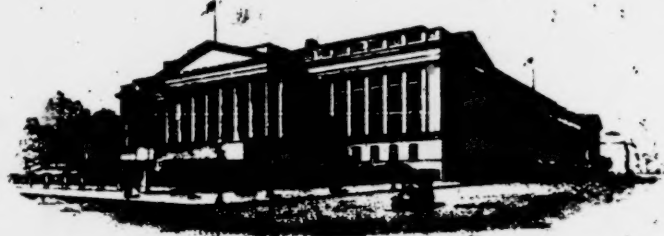
Filed August 10, 1962

DEFENDANT SAXON EXHIBIT 7

311

# Comptroller of the Currency

TREASURY DEPARTMENT



OF THE UNITED STATES

Washington, D. C.,

Whereas, satisfactory evidence has been presented to the Comptroller of the Currency that  
located in *State* **SAMPLE** has complied with all provisions  
of the statutes of the United States required to be complied with before being authorized  
to commence the business of banking as a National Banking Association;

Now therefore, I hereby certify that the above-named association is authorized  
to commence the business of banking as a National Banking Association.

In testimony whereof, witness my signature and seal of  
this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Charter No.

Comptroller of the Currency



Filed August 13, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

MOTION FOR LEAVE TO AMEND ANSWER

Intervening Defendant, Whitney National Bank in Jefferson Parish, moves the Court for leave to file and serve a supplemental answer, a copy of which is annexed hereto. The ground of this motion is that the matters set forth in the supplemental answer arose after Intervening Defendant had served its original answer.

Respectfully submitted,

W. GRAHAM CLAYTOR, JR.,  
701 Union Trust Building,  
Washington 5, D. C.

MALCOLM L. MONROE,  
1424 Whitney Building,  
New Orleans 12, Louisiana.

August 13, 1962.

Filed September 10, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

SUPPLEMENTAL ANSWER OF INTERVENING DEFENDANT WHITNEY NATIONAL BANK IN JEFFERSON PARISH

Intervening Defendant, Whitney National Bank in Jefferson Parish, for its supplemental answer herein, alleges:

I

Since the date of filing Intervening Defendant's original answer herein, the Louisiana Legislature has passed Act No. 275 of 1962, a certified copy of which is Plaintiffs' Exhibit L. Act No. 275 was first introduced into the Louisiana House of Representatives as House Bill 1221 on June 3, 1962 just six (6) days prior to the filing of this suit by the Bank of New Orleans and Trust Company, et al. House Bill 1221 was certified by the Governor as emergency legislation on July 4, 1962. Under Louisiana law, House Bill 1221 became immediately effective as law when it was signed by the Governor as Act No. 275 on July 10, 1962, at 4:45 p.m.

II

As first introduced in the House of Representatives, House Bill 1221 would not have prevented Whitney National Bank in Jefferson Parish from opening for business as the stock of the said bank was already owned by Whitney Holding Company. Subsequent to the granting of a temporary restraining order by this Court on June 27, 1962, which prevented the Comptroller of Currency from issuing a certificate to commence business to Whitney National Bank in Jefferson Parish, House Bill 1221 was amended by the insertion therein of the present Sub-Section 5 of Section 3 of Act 275, which applies only to Whitney

National Bank in Jefferson Parish, and which specifically provides as follows:

**"Section 3. Prohibitions upon Acquisition of Bank Shares or assets.**

It shall be unlawful . . . (5) for any bank holding company or subsidiary thereof *to open for business* any bank not now opened for business, *whether or not, a charter, permit, license or certificate to open for business has already been issued.* (Emphasis added.)

### III

The temporary restraining order issued herein on June 27, 1962, and the preliminary injunction granted by this Court on July 6, 1962, dated July 10, 1962, both of which enjoined the Comptroller of Currency from issuing a certificate to commence business, were the sole reason that Whitney National Bank in Jefferson Parish did not open its doors for business several weeks prior to July 10, 1962, the effective date of Act No. 275.

### IV

Because Louisiana Act 275 became effective on July 10, 1962, denial of the Plaintiffs' petition for permanent injunction and declaratory relief will not return Intervening Defendant to the *status quo* that existed on June 27, 1962, the date on which the temporary restraining order was issued. Plaintiffs now rely on Act 275 as an alternative ground for summary judgment in their favor. Consequently, the question of the applicability and legality of Act 275 has been injected into this case by the Plaintiffs, and this question must be passed upon if Intervening Defendant is to be restored to the former position it would have been in had the temporary restraining order not been issued.

### V

Intervening Defendant specially avers that Act 275 furnishes no basis for granting the Plaintiffs' request for declaratory relief or for an injunction, either temporary or permanent, against either Defendant Comptroller of the Currency or Intervening Defendant, because Act 275 does

not apply to the Comptroller of the Currency or to a national bank such as Whitney National Bank in Jefferson Parish.

## VI

Intervening Defendant further avers that Act 275, if applicable, violates the statutes and Constitution of the United States in the following respects:

(a) Act 275 is an attempt by the State of Louisiana to prevent the opening of a national bank that is properly chartered and organized in compliance with federal law, and as such is in direct conflict with the provisions of the National Banking Act, 12 U.S.C. 26, which provides that the Comptroller of Currency has authority to decide when a national bank may commence business. It is therefore invalid under the supremacy clause of the United States Constitution (Article VI, Section 2).

(b) Act 275 violates the Fourteenth Amendment to the United States Constitution in two respects:

(1) Sub-section 5 of section 3 of Act 275, if applied to Whitney National Bank in Jefferson Parish, constitutes an arbitrary, capricious and unreasonable classification that denies equal protection of law to the Intervening Defendant.

(2) Whitney National Bank in Jefferson Parish had completed all steps required by law and was ready to commence business several weeks prior to the effective date of Act 275. Intervening Defendant, therefore, had a vested property right which Act 275 denies Intervening Defendant without due process of law.

(c) Act 275 violates Article I, Section 10 of the United States Constitution in that it impairs the obligation of a contract between the federal government and the Intervening Defendant.

WHEREFORE, reiterating and fully reserving all its rights under the prayer of its original answer, Intervening Defendant further prays that this Court enter a judgment herein declaring that Louisiana Act 275 of 1962 does not apply to either the Defendant Comptroller of the Intervening Defendant, Whitney National Bank in Jefferson Par-

ish. In the alternative, Intervening Defendant further prays for a judgment declaring that the said Act 275 is unconstitutional and void. Intervening Defendant further prays for all legal, equitable and declaratory relief.

W. GRAHAM CLAYTOR, JR.,  
701 Union Trust Building,  
Washington 5, D. C.

MALCOLM L. MONROE,  
1424 Whitney Building,  
New Orleans 12, Louisiana.

August 13, 1962.

Filed August 13, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title Omitted]

MOTION OF INTERVENING DEFENDANT FOR SUMMARY JUDGMENT

Comes now Intervening Defendant Whitney National Bank in Jefferson Parish, through its undersigned counsel, and moves the Court to enter summary judgment in its favor as prayed for in the original answer and the supplemental answer filed herein on the grounds that there is no genuine issue herein as to any material fact and that it is entitled to judgment as a matter of law. Attached in support of this motion are an affidavit of E. A. Waffenschmidt, dated August 3, 1962; and a Supplemental affidavit of James J. Gilly, dated August 3, 1962, a Statement of Facts As To Which There is No Genuine Issue filed pursuant to Local Civil Rule 9(h), and a printed Statement of Points and Authorities.

In further support of this motion, specific reference is here made to the following affidavits with exhibits attached:

1. Affidavit of James J. Saxton, Comptroller of the Currency, dated June 20, 1962.

2. Affidavit of Morgan L. Whitney, dated June 25, 1962.
3. Affidavit of James J. Gilly, dated June 16, 1962.

General reference is also made to the other papers on file in this action, since a motion for summary judgment searches the entire record before the Court.

W. GRAHAM CLAYTOR, JR.,  
701 Union Trust Building  
Washington 5, D. C.

MALCOLM L. MONROE,  
1424 Whitney Building,  
New Orleans 12, Louisiana.

August 13, 1962.

Filed August 13, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

STATEMENT OF INTERVENING DEFENDANT WHITNEY NATIONAL  
BANK IN JEFFERSON PARISH OF MATERIAL FACTS AS TO  
WHICH THERE IS NO GENUINE ISSUE

Intervening defendant Whitney National Bank in Jefferson Parish, in support of its motion for summary judgment herein and pursuant to local Civil Rule 9(h), sets forth the following statement of material facts as to which there is no genuine issue in this case:

(1) Intervening defendant Whitney National Bank in Jefferson Parish, and Whitney National Bank of New Orleans, are national banking associations organized under 12 U.S.C. §§ 21 et seq., and are wholly owned subsidiaries (except for directors' qualifying shares) of Whitney Holding Corporation, a bank holding company incorporated under the laws of Louisiana and duly registered under the Bank Holding Company



Act of 1956, 12 U.S.C. §§ 1841-48. (Saxon Affidavit of June 20, 1962.)

(2) The present status of these three corporations was achieved pursuant to a plan which provided that Whitney National Bank of New Orleans, by consent of its stockholders and in accordance with appropriate approvals of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System, would reorganize so that its stockholders would own stock of the Whitney Holding Corporation, a registered bank holding company, in the same proportion in which they formerly owned stock of the bank, and Whitney Holding Corporation in turn would own all of the stock of Whitney National Bank of New Orleans. The plan further provided that Whitney Holding Corporation with approval of the Comptroller of the Currency and of the Federal Reserve Board would organize as another wholly owned subsidiary the Whitney National Bank in Jefferson Parish, utilizing as its capital funds some \$642,000 to be paid to Whitney Holding Corporation as a dividend out of undivided profits of Whitney National Bank of New Orleans, plus the funds subscribed by its directors for their qualifying shares. The steps pursuant to which this program was achieved are summarized hereafter. (Saxon Affidavit of June 20, 1962; Defendant's Exhibit 6.)

(3) On July 20, 1961, Whitney National Bank of New Orleans caused to be organized a Louisiana corporation under the name of "Whitney Holding Corporation," all the stock of which was issued to Whitney National Bank of New Orleans and promptly distributed to the stockholders of Whitney National Bank of New Orleans as a dividend. (Saxon Affidavit of June 20, 1962.)

(4) On June 28, 1961, there were filed with the Comptroller of the Currency three applications:

(a) To organize a new national banking association in New Orleans under the name of Crescent City National Bank as a wholly owned subsidiary of Whitney Holding Corporation;

(b) To consolidate Whitney National Bank of New Orleans into Crescent City National Bank under the name of the former, the stockholders of the

former Whitney National Bank of New Orleans to receive for their stock in that bank stock in Whitney Holding Corporation;

(c) To organize a new national banking association in Jefferson Parish under the name of "Whitney National Bank in Jefferson Parish", as a wholly owned subsidiary of Whitney Holding Corporation.

(5) On July 14, 1961 Whitney Holding Corporation filed with the Federal Reserve Board an application to become a registered bank holding company under the provisions of the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841-48. Notice of the receipt of this application was published in the *Federal Register* on July 28, 1961, which provided an opportunity for submission of views regarding the application. (Plaintiffs' Exhibit 1.)

(6) On October 3, 1961, the Comptroller of the Currency gave preliminary approval to the formation of two new national banks, the Crescent City National Bank and the Whitney National Bank in Jefferson Parish, subject to approval by the Federal Reserve Board of the application of Whitney Holding Corporation to become a bank holding company by acquiring the stock of Crescent City National Bank (to be renamed Whitney National Bank of New Orleans) and Whitney National Bank in Jefferson Parish. (Saxon Affidavit of June 20, 1961, p. 7.)

(7) By order dated December 19, 1961, duly published in the *Federal Register* on December 22, 1961, the Federal Reserve Board scheduled for January 17, 1962, a public hearing on the application of Whitney Holding Corporation. At the public hearing held on January 17, 1962, representatives of Whitney Holding Corporation presented their arguments and all opponents of the application were given a full opportunity to be heard. None of the plaintiffs herein appeared at this public hearing or submitted any opposition to the application. (Saxon Affidavit of June 20, 1962, p. 5; Defendant's Exhibit 3; Defendant's Exhibit 5, p. 1.)

(8) On May 3, 1962, the Federal Reserve Board approved the application of Whitney Holding Corporation to become a registered bank holding company by

acquiring the stock of the Crescent City National Bank (to be renamed Whitney National Bank of New Orleans) and the Whitney National Bank in Jefferson Parish. (Saxon Affidavit of June 20, 1962, p. 5; Defendant's Exhibit 5.)

(9) On May 10, 1962, Whitney National Bank in Jefferson Parish executed and delivered to the Comptroller of the Currency Articles of Association and the Certificate of Organization pursuant to 12 U.S.C. § 24. By letter dated May 11, 1962 William B. Camp, Deputy Comptroller of the Currency, recognized the corporate existence of Whitney National Bank in Jefferson Parish as a national banking association.

(10) On May 18, 1962, the Comptroller of the Currency approved the consolidation of the existing Whitney National Bank of New Orleans into the Crescent City National Bank under the name Whitney National Bank of New Orleans. Under the terms of this consolidation the shareholders of the old Whitney National Bank of New Orleans exchanged their shares of stock for stock of Whitney Holding Corporation, dissenting shareholders being entitled to appraisal and purchase of their shares under the provisions of the National Banking Act. There were no dissenting shareholders. At this point, accordingly, the former shareholders of the old Whitney National Bank of New Orleans owned all of the stock of Whitney Holding Corporation which in turn owned all of the stock (except directors' qualifying shares) of the new Whitney National Bank of New Orleans (formerly Crescent City National Bank) and of the newly organized Whitney National Bank in Jefferson Parish. (Saxon Affidavit of June 20, 1962, p. 6.)

(11) Thereafter with the approval and in accordance with the regulations of the Federal Reserve Board, Whitney National Bank of New Orleans transferred to Whitney Holding Corporation a dividend of \$650,000 paid out of its undivided profits available for payment of dividends. \$642,000 of these funds were transferred by Whitney Holding Corporation to its subsidiary, the newly organized Whitney National Bank in Jefferson Parish. These funds, together with \$8,000 subscribed by the new directors for their qualifying shares, constitute the initial capital funds of

\$650,000 of Whitney National Bank in Jefferson Parish. (Saxon Affidavit of June 20, 1962, p. 6; Defendant's Exhibit 6.)

(12) The first meeting of the stockholders of Whitney National Bank in Jefferson Parish was held on May 24, 1962, and directors of the said bank were properly elected. The directors of the Whitney National Bank in Jefferson Parish have paid the purchase price for their qualifying shares, have been sworn, qualified and have taken office as directors. By-laws have been adopted. Officers of the bank have been elected. Stock of the Federal Reserve Bank of Atlanta in the amount of \$18,000.00 has been subscribed and paid for by Whitney National Bank in Jefferson Parish in its own name. (Saxon Affidavit of June 20, 1962, p. 6.)

(13) The present suit was filed on June 9, 1962, just as the Comptroller of the Currency was about to issue a Certificate of Authority pursuant to 12 U.S.C. § 27, permitting the Whitney National Bank in Jefferson Parish to commence banking operations. (Complaint.)

(14) Upon being advised of the filing or impending filing of this suit, the Comptroller of the Currency voluntarily agreed to withhold issuance of his Certificate of Authority to Whitney National Bank in Jefferson Parish until a motion for preliminary injunction filed by the plaintiffs in such suit could be determined. (Tr. June 27, 1962, pp. 3-4.)

(15) On June 27, 1962, the Comptroller of the Currency refused voluntarily to withhold issuance of the said Certificate of Authority any longer. Thereupon Judge Hart on application of the plaintiffs granted a temporary restraining order directing the Comptroller to withhold his Certificate until July 6, 1962. (Tr. June 27, 1962, pp. 24-25; temporary restraining order dated June 27, 1962.)

(16) On July 6, 1962, Judge Holtzoff granted plaintiffs' motion for a preliminary injunction, and on July 10, 1962, signed the preliminary injunction herein. (Tr. July 6, 1962, p. 86; preliminary injunction dated July 10, 1962.)

(17) Had it not been for the institution of these proceedings on June 9, 1962, the Comptroller of the Currency would have issued a Certificate of Authority

under 12 U.S.C. § 27 permitting the Whitney National Bank in Jefferson Parish to commence banking operations on or about that date and such banking operations would in fact have been commenced at that time. (Gilly Affidavit of August 3, 1962; Tr. June 27, 1962, p. 13.)

(18) Had it not been for issuance of the temporary restraining order on June 27, 1962, and the preliminary injunction on July 6, 1962, the Comptroller of the Currency would, on or about the former date, have issued a Certificate of Authority permitting the Whitney National Bank in Jefferson Parish to commence banking operations, and such banking operations would then immediately have been commenced. (Gilly Affidavit of August 3, 1962; Tr. June 27, 1962, pp. 8, 10, 12.)

(19) On July 10, 1962, Act No. 275 of the 1962 regular session of the Louisiana Legislature, purporting to regulate bank holding companies, was enacted into law. (Plaintiffs' Exhibit L.)

Respectfully submitted,

W. GRAHAM CLAYTOR, JR.,  
701 Union Trust Building,  
Washington 5, D. C.

MALCOLM L. MONROE,  
1424 Whitney Building,  
New Orleans 12, Louisiana.

August 13, 1962.

Filed August 13, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

AFFIDAVIT IN SUPPORT OF INTERVENING DEFENDANT

STATE OF LOUISIANA,  
Parish of Orleans.

Before me, the undersigned authority, A Notary Public, duly qualified and commissioned in the Parish of Orleans, State of Louisiana, personally came and appeared:

E. A. WAFFENSCHMIDT, who, being by me duly sworn, did depose and state that:

(1) Affiant is a resident of the City of New Orleans, State of Louisiana, and is the Cashier and Assistant Vice President of Whitney National Bank in New Orleans. This affidavit is made and filed in support of the motion for summary judgment filed by Whitney National Bank in Jefferson Parish, Intervening Defendant in the above entitled proceedings.

(2) At the Stockholders Meeting of the Whitney National Bank held pursuant to due notice on November 29, 1961, affiant served as Secretary of this meeting. In his capacity as Secretary of the said meeting, affiant was charged with responsibility for presenting the final recapitulation of the vote on the resolution. Affiant declares that the attached Tabulation of Vote, marked Whitney Exhibit No. 5, on the resolution to ratify the consolidation agreement between Whitney National Bank of New Orleans and Crescent City National Bank is true and accurate in every respect.

(3) Affiant further declares that none of the stockholders of Whitney National Bank voting against the consolidation

agreement have requested that the value of their shares be appraised pursuant to 12 U.S.C. 215.

E. A. WAFFENSCHMIDT.

Sworn and subscribed before me, this 3rd day of August, 1962.

Melvin A. Schwartzman,  
*Notary Public.*

My commission is issued for life:



INTERVENING DEFENDANT EXHIBIT 5

TABULATION OF VOTE

Resolution: Reaffirmation of Incorporation Agreement Between  
Whitney National Bank of New Orleans and Crescent  
City National Bank 327

In Favor of:	In Person	<u>1112</u>	<u>TOTAL</u>
	By Proxy	<u>93183</u>	<u>93645</u>
Against:	In Person	<u>5007</u>	
	By Proxy	<u>7143</u>	<u>12145</u>

John C. Shea  
REGISTRAR

Approved  
JUDGES OF ELECTION

By M. B. [Signature]  
Chairman

Approved and certified:

By Col. W. [Signature]  
Secretary

TABULATION OF VOTE

328

Resolution: 3 - Authorizing Board of Directors to proceed  
with carrying out the consolidation  
Agreement

In Favor of; In Person 7-77 TOTAL  
By Proxy 43, 041 43, 774

Against: In Person 4, 881  
By Proxy 7, 143 12, 024

John R. Shea  
REGISTRAR

Approved  
JUDGES OF ELECTION

By [Signature]  
Chairman

Approved and certified:

By [Signature]  
Secretary

Filed August 13, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

AFFIDAVIT IN SUPPORT OF INTERVENING DEFENDANT

STATE OF LOUISIANA,  
Parish of Orleans.

Before me, the undersigned authority, personally came and appeared:

JAMES J. GILLY, who, being by me duly sworn, deposes and says:

(1) I am a resident of the City of New Orleans and President of the Whitney National Bank in Jefferson Parish. This affidavit is made to supplement the Affidavit made in these proceedings on June 16, 1962 and is filed in support of Intervening Defendant's Motion for Summary Judgment.

(2) The Whitney National Bank in Jefferson Parish would have been open for business prior to June 27, 1962, had it received a certificate to open from the Comptroller of the Currency. Attached hereto for identification is the 1962 Legislative Calendar of the State of Louisiana, marked Whitney Exhibit No. 1, and the Official Journal of the House of Representatives of the State of Louisiana for June 27, 1962, marked Whitney Exhibit No. 2.

(3) As is shown on the attached List of Directors of Whitney National Bank of New Orleans, marked Whitney Exhibit No. 3, and List of Directors of Whitney National Bank in Jefferson Parish, marked Whitney Exhibit No. 4, both of which are on file with the Office of the Comptroller of Currency, there are only four directors common to each Board.

JAMES J. GILLY.

Sworn and subscribed before me, this 3rd day of August, 1962.

MELVIN A. SCHWARTZMAN,  
*Notary Public.*

My Commission is issued for life.

EXHIBIT 1

1962

# LEGISLATIVE CALENDAR

OF THE

STATE OF LOUISIANA

TWENTY-FIFTH REGULAR SESSION

OF THE LEGISLATURE

UNDER THE CONSTITUTION OF 1921



SEVENTH WEEK

Ending June 30, 1962

---

BY AUTHORITY

---

C. C. AYCOCK  
Lieutenant Governor  
and President of the Senate

C. W. ROBERTS

J. THOS. JEWELL  
Speaker  
House of Representatives

W. CLEGG COLE

**TWENTY-FIFTH REGULAR SESSION  
OF THE LEGISLATURE**

**UNDER THE CONSTITUTION OF 1921**



**SEVENTH WEEK**

**Ending June 30, 1962**

---

**BY AUTHORITY**

---

**C. C. AYCOCK**

**Lieutenant Governor  
and President of the Senate**

**C. W. ROBERTS**

**Secretary  
Louisiana Senate**

**J. THOS. JEWELL**

**Speaker  
House of Representatives**

**W. CLEGG COLE**

**Clerk  
House of Representatives**

June 4—

Read by title and referred to the Committee on Judiciary, Section B

**HOUSE BILL No. 1221—**

By Mr. Angelle (By Request):

**AN ACT**

To define the bank holding company, to prohibit the formation of new bank holding companies, and to control the future expansion of existing bank holding companies and of their subsidiaries.

**HOUSE**

June 3—

Read by title.

June 4—

Read by title and referred to the Committee on Judiciary, Section B

June 11—

Reported favorably.

June 14—

Read by title, ordered engrossed and passed to its third reading.

June 19—

Returned to the Calendar subject to call.

June 25—

Made Special Order of the Day for Wednesday, June 27.

June 27—

Called from the Calendar.

Read by title. Considered in Committee of the Whole, reported with amendments, amended, read the third time in full, as amended, roll called on final passage, yeas 80, nays 16. Finally passed, title adopted, ordered to Senate.

**SENATE**

June 28—

Received in the Senate.

R.S., read first and second time by title and referred to the Committee on Banking

Rules suspended

Recommitted to the Committee on Judiciary, Section B

**HOUSE BILL No. 1222—**

By Mr. Boozman:

**AN ACT**

To amend and re-enact Paragraph (6) of Subsection (A) of Section 742 of Title 17 of the Louisiana Revised Statutes of 1950, and to amend said Subsection (A) by adding thereto a new Paragraph (7), all relative to qualifications for eligibility to receive old age assistance for teachers from funds dedicated or allocated out of the State Public School Fund, to further provide for qualifications for eligibility.

**HOUSE**

June 3—

Read by title.

June 4—

Read by title and referred to the Committee on Judiciary, Section B

June 11—

Reported without action by the Committee on Judiciary, Section B.

with recommendation that it be recommitted to the Committee on Joint Committee on Retirement.

June 12—

Recommitted to the Committee on

June 20—

Read third time in full, roll called on final passage, yeas 94, nays 0. Finally passed, title adopted, ordered to Senate.

**SENATE**

June 21—

Received in the Senate.

R.S., read first and second time by title and referred to the Joint Committee on Retirement

**HOUSE BILL No. 1223—**

By Mr. Casey (By Request):

**AN ACT**

To divide the City of New Orleans into wards, representative districts and municipal districts; providing that all public officials elected and now holding office from the wards, representative districts, municipal districts, councilmanic districts and senatorial districts of the City of New Orleans, as such wards and districts were described and established as of May 1, 1962 in Section 2 of Act 159 of 1912 and Section..... of the Charter of the City of New Orleans and in Sections 4 and 5 of Article III of the Constitution of Louisiana, shall serve the remainder of the terms for which they were elected;

**HOUSE**

June 3—

Read by title.

June 4—

Read by title and referred to the Committee on Judiciary, Section A

**HOUSE BILL No. 1224—**

By Mr. Barranger:

**AN ACT**

To authorize the governing authorities of all municipalities in this State to adopt ordinances regulating the business of purchasing, selling, transferring, exchanging, repairing or storing of new or second hand bicycles, parts and accessories for bicycles, at wholesale or retail, and to provide for the registration of description and ownership of bicycles; and repealing Sections 491 through 501 of Title 51 of the Louisiana Revised Statutes of 1950.

**HOUSE**

June 3—

Read by title.

June 4—

Read by title and referred to the Committee on Judiciary, Section B

June 7—

Reported favorably.

June 11—

Read by title, ordered engrossed and passed to its third reading.

June 13—

Read third time in full, roll called on final passage, yeas 87, nays 2. Finally passed, title adopted, ordered to Senate.

**SENATE**

June 14—

Received in the Senate.

R.S., read first and second time by title and referred to the Committee on Judiciary, Section A

**HOUSE BILL No. 1225—**

By Mr. Womack and Senator Gilbert:

**AN ACT**

Judiciary, Section B

June 11—  
Reported favorably.

June 14—  
Read by title, ordered engrossed and passed to its third reading.

June 19—  
Returned to the Calendar subject to call.

June 25—  
Made Special Order of the Day for Wednesday, June 27.

June 27—  
Called from the Calendar.  
Read by title. Considered in Committee of the Whole, reported with amendments, amended, read the third time in full, as amended, roll called on final passage, yeas 80, nays 16. Finally passed, title adopted, ordered to Senate.

SENATE

June 28—  
Received in the Senate.  
R.S., read first and second time by title and referred to the Committee on  
Banking  
Rules suspended  
Recommitted to the Committee on  
Judiciary, Section B

HOUSE BILL No. 1222—

By Mr. Boozman:

AN ACT

To amend and re-enact Paragraph (6) of Subsection (A) of Section 742 of Title 17 of the Louisiana Revised Statutes of 1950, and to amend said Subsection (A) by adding thereto a new Paragraph (7), all relative to qualifications for eligibility to receive old age assistance for teachers from funds dedicated or allocated out of the State Public School Fund, to further provide for qualifications for eligibility.

HOUSE

June 3—  
Read by title.

June 4—  
Read by title and referred to the Committee on  
Judiciary, Section B

June 11—  
Reported without action by the Committee on  
Judiciary, Section B.  
with recommendation that it be recommitted to the Committee on  
Joint Committee on Retirement.

June 12—  
Recommitted to the Committee on  
Joint Committee on Retirement

June 13—  
Reported with amendments.

June 18—  
Read by title, amended, ordered engrossed and passed to its third reading.

cilmanic districts and senatorial districts of the City of New Orleans, as such wards and districts were described and established as of May 1, 1962 in Section 2 of Act 159 of 1912 and Section..... of the Charter of the City of New Orleans and in Sections 4 and 5 of Article III of the Constitution of Louisiana, shall serve the remainder of the terms for which they were elected;

HOUSE

June 3—  
Read by title.

June 4—  
Read by title and referred to the Committee on  
Judiciary, Section A

HOUSE BILL No. 1224—

By Mr. Barranger:

AN ACT

To authorize the governing authorities of all municipalities in this State to adopt ordinances regulating the business of purchasing, selling, transferring, exchanging, repairing or storing of new or second-hand bicycles, parts and accessories for bicycles, at wholesale or retail, and to provide for the registration of description and ownership of bicycles; and repealing Sections 491 through 501 of Title 51 of the Louisiana Revised Statutes of 1950.

HOUSE

June 3—  
Read by title.

June 4—  
Read by title and referred to the Committee on  
Judiciary, Section B

June 7—  
Reported favorably.

June 11—  
Read by title, ordered engrossed and passed to its third reading.

June 13—  
Read third time in full, roll called on final passage, yeas 87, nays 2. Finally passed, title adopted, ordered to Senate.

SENATE

June 14—  
Received in the Senate.  
R.S., read first and second time by title and referred to the Committee on  
Judiciary, Section A

HOUSE BILL No. 1225—

By Mr. Womack and Senator Gilbert:

AN ACT

To provide for the manner of fixing of the salary of the President and the Secretary of the Board of Commissioners of the Tensas Basin Levee District; and repealing all laws or parts of laws, in conflict herewith.

HOUSE

June 3—  
Read by title.



Filed August 13, 1962

EXHIBIT 2

Mr. Bertrand In The Chair

House Business Resumed

Speaker Jewell In The Chair

OFFICIAL JOURNAL  
OF THE  
HOUSE OF REPRESENTATIVES  
OF THE  
STATE OF LOUISIANA

THIRTY-SECOND DAY'S PROCEEDINGS

Twenty-fifth Regular Session of the  
Legislature Under the Adoption of  
the Constitution of 1921

House of Representatives  
State Capitol  
State of Louisiana

Wednesday, June 27, 1962, Baton Rouge, La.

The House was called to order at 1:00 o'clock p.m., by  
Hon. J. Thos. Jewell, Speaker of the House of Representatives

ROLL CALL

The roll being called, the following members answered to  
their names:

PRESENT

Messrs.—		
Mr. Speaker	Crane	Mollere
Adams	Decuir	Morgan
Alford	Delony	Munson
Allen, H.	Downes	Murtes
(Tangipahoa)	Dupont	Napper
Allen, I. J.	Dupuis	O'Brien
(Jackson)	Ivrand	Ordoneaux
Altmyer	Dyer	Peck
Ammons	Dyson	Perron
Angelle	Falgout	Pfiater
Anzelmo	Fields	Rand
Arceneaux	Floyd	Rau
Ashley	Fulco	Richmond
Barranger	Garrett	Roy
Beanel	Gibbs	Sanders
Beeson	Gregson	Schoenberger
Bernard, D. A.	Grizzaffi	Schwegmann
(Lafourche)	Hamel	Seaman
Bernard, E. L.	Hoover	Sheridan
(W. B. R.)	Jack	Simon
Bernhard	John	Smith, B.
Bertrand	Jumonville	(Avoyelles)
Bethard	Knowlts	Smith, P. K.
Bickford	Lancaster	(Winn)
Bolden	Landrieu	Smither
Boozman	Leake	Steen
Branton	LeBreton	Stinson
Brown, A. D.	Lehmann	Strother
(Caddo)	Lewis	Sullivan
Brown, J. M.	Matassa	Sylvester
(Calcasieu)	McCormack	Tapper
Brown, W. K.	McGrays	Thomas
(Grant)		

The committee having risen, the chairman, Mr. Bertrand reported to the House that the Committee of the Whole had had under consideration:

HOUSE BILL No. 1221—

By Mr. Angelle (By Request):

AN ACT

To define the bank holding company, to prohibit the formation of new bank holding companies, and to control the future expansion of existing bank holding companies and of their subsidiaries.

Reported with the following amendments:

HOUSE FLOOR AMENDMENTS

Amendments proposed by Mr. Anzelmo to House Bill No. 1221 by Mr. Angelle.

Amend Printed bill as follows:

AMENDMENT No. 1—

On page 1, between lines 7 and 8, insert the following:  
"Be it enacted by the Legislature of Louisiana:"

AMENDMENT No. 2—

On page 1, strike out line 8 in its entirety and insert in lieu thereof the following:

"Section 1. Declaration of Policy."

AMENDMENT No. 3—

On page 1, strike out line 21 in its entirety and insert in lieu thereof the following:

"Section 2. Definitions."

AMENDMENT No. 4—

On page 3, strike out lines 11 and 12 in their entirety and insert in lieu thereof the following:

"Section 3. Prohibitions upon Acquisition of Bank Shares or Assets."

AMENDMENT No. 5—

On page 3, strike out line 29 in its entirety and insert in lieu thereof the following:

"Section 4. Penalties."

AMENDMENT No. 6—

On page 4, strike out line 8 in its entirety and insert in lieu thereof the following:

"Section 5. Administration"

AMENDMENT No. 7—

On page 4, strike out line 12 in its entirety and insert in lieu thereof the following:

"Section 6. Savings Clause."

AMENDMENT No. 8—

On page 4, strike out line 21 in its entirety and insert in lieu thereof the following:

"Section 7. Severability."

AMENDMENT No. 9—

On page 4, after line 26 add the following lines:

"Section 8. Repeal."

All laws or parts of laws in conflict herewith are hereby repealed."

HOUSE FLOOR AMENDMENTS

their names:

### PRESENT

Messrs.—

Mr. Speaker	Crane	Mollere
Adams	Decuir	Morgan
Aiford	Delony	Munson
Allen, H.	Downes	Murtes
(Tangipahoa)	Dupont	Napper
Allen, I. J.	Dupuis	O'Brien
(Jackson)	Durand	Ordeneaux
Altmyer	Dyer	Peck
Ammons	Dyson	Perron
Angelle	Falgout	Pfister
Anzelmo	Fields	Rand
Arceneaux	Floyd	Rau
Ashley	Fondren	Richmond
Barranger	Fulco	Roy
Beanel	Garrett	Sanders
Beeson	Gibbs	Schoenberger
Bernard, D. A.	Gregson	Schwegmann
(Lafourche)	Grizaffi	Seaman
Bernard, E. L.	Himel	Sheridan
(W. B. R.)	Hoover	Simon
Bernhard	Jack	Smith, B.
Bertrand	John	(Avoyelles)
Bethard	Jumonville	Smith, P. K.
Bickford	Knowles	(Winn)
Bolden	Lancaster	Smither
Boozman	Landrieu	Steen
Branton	Leake	Stinson
Brown, A. D.	LeBreton	Strother
(Caddo)	Lehmann	Sullivan
Brown, J. M.	Lewis	Sylvester
(Calcasieu)	Matassa	Tapper
Brown, W. K.	McCorinack	Thomas
(Grant)	McCrary	Triche
Buras	McGehee	Vesich
Casey	McGittigan	Villar
Ciacelo	McHenry	Womack
Cooper	McLain	
Crais	Michot	
Total—163.		

### ABSENT

Mrs. rs.—

Foshee

Smith, J. K.  
(Caddo)

Total—2.

The Speaker of the House announced that there were 163 members present and a quorum.

### Prayer

Prayer was offered by the Rev. Lee Porter.

### Reading of the Journal

On motion of Mr. I. J. Allen, the reading of the Journal was dispensed with.

On motion of Mr. I. J. Allen, the Journal of yesterday was adopted.

### Special Order Of The Day

#### House Bills and Joint Resolutions on Third Reading and Final Passage

The following entitled House Bills and Joint Resolutions on third reading and final passage were taken up and acted upon as follows:

#### HOUSE BILL No. 1221—

By Mr. Anzelmo (by Request):

#### AN ACT

To define the bank holding company, to prohibit the formation of new bank holding companies, and to control the future expansion of existing bank holding companies and of their subsidiaries.

Taken up on its third reading.

On motion of Mr. Anzelmo the House resolved itself into a Committee of the Whole to take into consideration the bill.

#### AMENDMENT No. 4—

On page 2, strike out lines 11 and 12 in their entirety and insert in lieu thereof the following:

"Section 3. Prohibitions upon Acquisition of Bank Shares or Assets."

#### AMENDMENT No. 5—

On page 3, strike out line 29 in its entirety and insert in lieu thereof the following:

"Section 4. Penalties."

#### AMENDMENT No. 6—

On page 4, strike out line 8 in its entirety and insert in lieu thereof the following:

"Section 5. Administration."

#### AMENDMENT No. 7—

On page 4, strike out line 13 in its entirety and insert in lieu thereof the following:

"Section 6. Savings Clause."

#### AMENDMENT No. 8—

On page 4, strike out line 21 in its entirety and insert in lieu thereof the following:

"Section 7. Severability."

#### AMENDMENT No. 9—

On page 4, after line 26 add the following lines:

"Section 8. Repeal.

All laws or parts of laws in conflict herewith are hereby repealed."

### HOUSE FLOOR AMENDMENTS

Amendments proposed by Mr. Anzelmo to House Bill No. 1221 by Mr. Angelle

Amend Printed bill as follows:

#### AMENDMENT No. 1—

On page 1, line 22, following the word "company" and preceding the word "in-", insert the words "foreign or domestic".

#### AMENDMENT No. 2—

On page 2, line 19, following the word "solicitation" insert the following:

"(C) nor shall this act apply to shares acquired by a bank holding company which is a bank, or by any banking subsidiary of a bank holding company, in satisfaction of a debt previously contracted in good faith, but such bank holding company or such subsidiaries shall dispose of such shares within a period of two years from the date on which they were acquired or from the date of enactment of this Act, whichever is later.

"(D) or shall this act apply to shares which are held or acquired by a bank holding company which is a bank or by any banking subsidiary of a bank holding company, in good faith in a fiduciary capacity; except where such shares are held for the benefit of the shareholders of such bank holding company or any of its subsidiaries, or to shares which are of the kinds and amounts eligible for investment by National banking associations under the provisions of section 5136 of the Revised Statutes; or to shares lawfully acquired and owned prior to the date of enactment of this Act by a bank which is a bank holding company, or by any of its wholly owned subsidiaries."

**AMENDMENT No. 3—**

On page 2, line 12, delete the words "joint venture".

**AMENDMENT No. 4—**

On page 2, line 13, delete the figure "(1)".

**AMENDMENT No. 5—**

On page 2, line 15, delete the words "or (2) any corpora-" and delete lines 16 through 22 in their entirety.

**AMENDMENT No. 6—**

On page 3, line 21, following the word "thereof" change the period to a semi-colon and add the following:

(5) for any bank holding company or subsidiary thereof to open for business any bank not now opened for business, whether or not, a charter, permit, license or certificate to open for business has already been issued.

**AMENDMENT No. 7—**

On page 1, line 24, delete the figure "15" and insert in lieu thereof the figure "25"

**AMENDMENT No. 8—**

On page 1, line 28, delete the number "15" and insert in lieu thereof "25"

**AMENDMENT No. 9—**

On page 2, line 27, delete the number "15" and insert in lieu thereof the figure "25"

**AMENDMENT No. 10—**

On page 3, line 1, delete the number "16" and insert in lieu thereof the number "25"

**AMENDMENT No. 11—**

On page 3, line 19, strike out the number "5" and insert in lieu thereof the figure "25"

On motion of Mr. Anzelmo the report of the committee, together with the amendments, was adopted.

The Bill was read in full, as amended.

Mr. Angele moved the final passage of the Bill.

**ROLL CALL**

The roll was called with the following result:

**YEAS**

**Messrs.—**

Adams  
Alford  
Allen, H.  
(Tangipahoa)  
Allen, I. J.  
(Jackson)  
Altmyer  
Ammons  
Angele  
Anzelmo  
Arceneaux  
Ashley  
Beanel  
Beeson  
Bernard, D. A.  
(Lafourche)  
Bernard, E. L.  
(W. B. R.)  
Bernhard  
Bertrand  
Berthard  
Bickford  
Bolden  
Branton  
Brown, J. M.  
(Calcasieu)  
Brown, W. K.  
(Grant)  
Buras  
Chacelo

Cooper  
Crane  
Decuir  
Delony  
Downes  
Dupont  
Dupuis  
Durand  
Eyer  
Falgout  
Floyd  
Fondran  
Garrett  
Gibbs  
Hoover  
Jack  
John  
Jumionville  
Lancaster  
Lehmann  
Lewis  
Matassa  
McCormack  
McCrary  
McGehee  
McGittigan  
McHenry  
Michot  
Morgan  
Munson

Napper  
Orgoneaux  
Peck  
Perron  
Pfister  
Rand  
Rau  
Richmond  
Roy  
Sanders  
Scheenberger  
Schwegmann  
Seaman  
Sheridan  
Smith, B.  
(Avoyelles)  
Smith, P. K.  
(Winn)  
Steen  
Strother  
Sullivan  
Sylvester  
Tapper  
Thomas  
Trane  
Vesich  
Villar  
Wonnach

TOTAL—MR.

**NAYS**

**AMENDMENT No. 9—**

On page 2, line 27, delete the number "15" and insert in lieu thereof the figure "25"

**AMENDMENT No. 10—**

On page 3, line 1, delete the number "16" and insert in lieu thereof the number "25"

**AMENDMENT No. 11—**

On page 3, line 19, strike out the number "5" and insert in lieu thereof the figure "25"

On motion of Mr. Anzelmo the report of the committee, together with the amendments, was adopted.

The Bill was read in full, as amended.

Mr. Angelle moved the final passage of the Bill.

**ROLL CALL**

The roll was called with the following result:

**YEAS**

Messrs.—		
Adams	Cooper	Napper
Alford	Crane	Oreoneaux
Allen, H.	Decuir	Peck
(Tangipahoa)	Delony	Peron
Allen, I. J.	Downes	Pfister
(Jackson)	Dupont	Rand
Altmyer	Dupuis	Rau
Ammons	Durand	Richmond
Angelle	Dyer	Roy
Anzelmo	Falgout	Sanders
Arceneaux	Floyd	Schoenberger
Ashley	Fondren	Schwegmann
Begnel	Garrett	Seaman
Beeson	Gibbs	Sheridan
Bernard, D. A.	Hoover	Smith, B.
(Lafourche)	Jack	(Avoyelles)
Bernard, E. L.	John	Smith, P. K.
(W. B. R.)	Jumonville	(Winn)
Bernhard	Lancaster	Steen
Bertrand	Lehmann	Strother
Bethard	Lewis	Sullivan
Bickford	Matassa	Sylvester
Bolden	McCormack	Tapper
Branton	McCrary	Thomas
Brown, J. M.	McGehee	Trine
(Calcasieu)	McGittigan	Vesich
Brown, W. K.	McHenry	Vihar
(Grant)	Michot	Wonnack
Buras	Morgan	
Claccio	Munson	
Total—80.		

**NAYS**

Messrs.—		
Barranger	Dyson	Landrieu
Boozman	Fulco	Le Breton
Brown, A. D.	Gregson	O'Brien
(Caddo)	Grizzaffi	Snather
Casey	Himel	Stinson
Crais	Knowles	
Total—16.		

**ABSENT.**

Messrs.—		
Mr. Speaker	McLain	Smith, J. K.
Fields	Mollere	(Caddo)
Foshee	Martens	
Lenke	Simon	
Total—9.		

And the Bill was finally passed.

And the Chair declared that the above Bill was finally passed.

The title to the above Bill was read and adopted.

Mr. Angelle moved to reconsider the vote by which the above Bill was finally passed, and, on his own motion, the motion to reconsider was laid on the table.

## LIST OF DIRECTORS

The WHITNEY National Bank

Located at NEW ORLEANS, LOUISIANA

Comptroller of the Currency,  
Washington, D. C.

The following is a list of all the directors elected at the November 29, 1961 <sup>Special</sup> ~~annual~~ meeting of shareholders of The Whitney National Bank of New Orleans, La. held on November 29, 1961, the required notice of which was given, to director, other officer, or employee having acted as proxy at said meeting.

106,497 shares of the common stock of the bank were represented at the meeting.

       shares of the preferred stock of the bank were represented at the meeting.

NAME	POST OFFICE ADDRESS
1	
2	SEE ATTACHED LIST
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	

At least two-thirds of the directors are residents of, and have resided for at least one year (immediately preceding their election), in the State, Territory, or District in which the Association is located, or within one hundred miles of the location of the principal office of the Association.

Respectfully,

*Ed W. [Signature]*

President or Cashier

held on November 29, 1968, the required notice of which was given, a director, other officer, or employee having acted as proxy at said meeting.

206,497 shares of the common stock of the bank were represented at the meeting.

\_\_\_\_ shares of the preferred stock of the bank were represented at the meeting.

NAME	POST OFFICE ADDRESS
1 _____	_____
2 _____	_____
3 _____	_____
4 _____	_____
5 _____	_____
6 _____	_____
7 _____	_____
8 _____	_____
9 _____	_____
10 _____	_____
11 _____	_____
12 _____	_____
13 _____	_____

At least two-thirds of the directors are residents of, and have resided for at least one year (immediately preceding their election), in the State, Territory, or District in which the Association is located, or within one hundred miles of the location of the principal office of the Association.

Respectfully,

*Ed W. [Signature]*

President or Cashier.

(\*Insert "Adjourned" in case of adjournment of meeting.)

### IMPORTANT

There is no authority for the election of directors in advance of prescribed time, and if annual meeting of shareholders is held at a time earlier than that specified in the articles of association another meeting will be required.

When the day fixed for the regular annual meeting of the shareholders of a national bank falls on a legal holiday, the meeting shall be held on the next following banking day.

If a meeting is held at a time later than that specified in articles of association, explanation should be made under "Remarks" on the back of the sheet.

If number of directors elected does not correspond with the requirements of the articles of association on file here, this should also be explained.

(over)

10-2523-21



Filed August 13, 1962

EXHIBIT 3

LIST OF DIRECTORS

<u>Name</u>	<u>Home Office Address</u>
1. Edward B. Benjamin	3213 Whitney Bldg., N. O., La.
2. Keckha W. Berry	c/o Whitney Natl. Bank, N.O., La.
3. Hollis H. Crosby	Crosby, Mississippi
4. R. D. Crowell, Jr.	Long Leaf, Louisiana
5. W. E. DePass, Jr.	c/o Standard Supply & Hardware Co., P. O. Box 680, N. O. 7, La.
6. Crawford H. Ellis	P. O. Box 219, N. O., La.
7. Clifford P. Favrot	209 Carondelet Bldg., N. O. 12, La.
8. James Gilly, Jr.	c/o Whitney Natl. Bank, N. O., La.
9. Leon Goldhaus	c/o The Leon Goldhaus Clothing Co., Ltd., 826 Canal St., N. O., La.
10. Leon Heymann	c/o Krauss Co., Ltd., 1201 Canal St., N. O., La.
11. H. T. Howard, Jr.	4534 St. Charles Ave., N.O. 15, La.
12. George A. Lutz	624 Gentl St., N. O. 16, La.
13. Joseph T. Lykes, Jr.	Commerce Bldg., N. O., La.
14. Malcolm L. Monroe	c/o Monroe and Lazarus, Whitney Bldg., N. O., La.
15. Jos. W. Montgomery	c/o United Fruit Co., 321 St. Charles St., N. O. 4, La.
16. Ralph P. Nolan	Algiers Ferry Plaza, Algiers, La.



1. Edward B. Benjamin
2. Keckin W. Berry
3. Hollis H. Crosby
4. E. D. Crowell, Jr.
5. W. E. DePass, Jr.
6. Crawford H. Ellis
7. Clifford P. Favrot
8. James Gilly, Jr.
9. Leon Godchaux
10. Leon Heymann
11. H. T. Howard, Jr.
12. George A. Lets
13. Joseph T. Lykes, Jr.
14. Malcolm L. Monroe
15. Jos. W. Montgomery
16. Ralph P. Nolan
17. Edgar B. Stern, Jr.
18. W. O. Turner
19. Morgan Whitney
20. Laurence W. Williams

1213 Whitney Bldg., N. O., La.  
 c/o Whitney Natl. Bank, N.O., La.  
 Crosby, Mississippi  
 Long Leaf, Louisiana  
 c/o Standard Supply & Hardware  
 Co., P. O. Box 680, N. O. 7, La.  
 P. O. Box 219, N. O., La.  
 200 Carondelet Bldg., N. O. 12, La.  
 c/o Whitney Natl. Bank, N. O., La.  
 c/o The Leon Godchaux Clothing Co.,  
 Ltd., 826 Canal St., N. O., La.  
 c/o Kraus Co., Ltd., 1201 Canal  
 St., N. O., La.  
 4534 St. Charles Ave., N.O. 15, La.  
 624 Canal St., N. O. 16, La.  
 Commerce Bldg., N. O., La.  
 c/o Monroe and Lebern, Whitney  
 Bldg., N. O., La.  
 c/o United Fruit Co., 321 St. Char.  
 St., N. O. 4, La.  
 Algiers Ferry Plaza, Algiers, La.  
 521 Royal St., N. O. 16, La.  
 c/o Louisiana Power & Light Co.  
 Algiers, La.  
 c/o Whitney Natl. Bank, N. O., La.  
 c/o Williams, Inc., Whitney Bldg.,  
 New Orleans, La.

1136

Filed August 13, 1962

EXHIBIT 4

LIST OF DIRECTORS

~~State~~ "Whitney National Bank in Jefferson Parish" (Organizing)  
(Name of Bank)

Located at Jefferson Parish, Louisiana

Comptroller of the Currency,  
Washington, D. C.

The following is a list of all the directors elected at the initial meeting of shareholders of The Whitney National Bank in Jefferson Parish, La. (organizing) of Jefferson Parish, La. held on May 10, 1962, the required notice of which was given.

20,000 shares of the common stock of the bank were represented at the meeting.

NAME	POST OFFICE ADDRESS
W. O. Turner	112 Delaronde Street, Algiers, La.
A. B. Paterson, Jr.	1233 West Bank Expressway, Harvey, La.
W. K. DePass, Jr.	832 Echoupitoulas Street, New Orleans, La.
Leon Godchaux, Jr.	623 Canal Street, New Orleans, La.
Henry J. Angelle	1200 S. Carrollton Avenue, New Orleans, La.
C. H. Botnick	1205 St. Charles Avenue, New Orleans, La.
James Gilly, Jr.	223 St. Charles Street, New Orleans, La.
Sterling Dunn	201 Baronne Street, New Orleans, La.

I hereby certify that at least two-thirds of the directors are residents of, and have resided for at least one year (immediately preceding their election), in the State, Territory or District in which the Association is located, or within one hundred miles of the location of the principal office of the Association.

Respectfully, /

located at Jefferson Parish, Louisiana

Comptroller of the Currency,  
Washington, D. C.

The following is a list of all the directors elected at the initial meeting of shareholders of The Whitney National Bank (organizing) of Jefferson Parish, La. held on May 10, 1962, the required notice of which was given.

20,000 shares of the common stock of the bank were represented at the meeting.

NAME	POST OFFICE ADDRESS
W. O. Turner	142 Delaronde Street, Algiers, La.
A. B. Paterson, Jr.	1233 West Bank Expressway, Harvey, La.
W. K. DePass, Jr.	832 Echoupitoulas Street, New Orleans, La.
Leon Godchaux, Jr.	823 Canal Street, New Orleans, La.
Henry J. Angelle	1200 S. Carrollton Avenue, New Orleans, La.
C. H. Botnick	1205 St. Charles Avenue, New Orleans, La.
James Gilly, Jr.	226 St. Charles Street, New Orleans, La.
Sterling Dunn	201 Baronne Street, New Orleans, La.

I hereby certify that at least two-thirds of the directors are residents of, and have resided for at least one year (immediately preceding their election), in the State, Territory or District in which the Association is located, or within one hundred miles of the location of the principal office of the Association.

Respectfully,

*James Gilly, Jr.*

*Keelm W. Berry*  
.....  
Correspondent for the Organizers  
Keelm W. Berry  
228 St. Charles Street, New Orleans,  
La.

Subscribed and sworn to before me  
this 10th day of May, 1962.

*Melvin I. Schwartzman*

Notary Public  
My Commission is Issued for Life.

MELVIN I. SCHWARTZMAN  
Notary Public, Parish of Orleans, State of La.  
My Commission is Issued for Life

EXHIBIT 4

Filed August 13, 1962

STATEMENT OF POINTS AND AUTHORITIES OF INTERVENING  
DEFENDANT

## APPENDIX A

LIST OF BANK HOLDING COMPANIES AND THEIR AFFILIATES OPERATING IN STATES WHICH  
PROHIBIT OR LIMIT BRANCH BANKING*A. Bank Holding Companies and Their Subsidiary Banks Operating in States Which  
Prohibit Branch Banking*

State	Bank Holding Company Operating in State	Affiliates in State and Location	
Colorado	Western Bancorporation	American National Bank,	Denver
		Englewood State Bank,	Englewood
		The First National Bank,	Fort Collins
Florida	Atlantic Trust Company	First Atlantic Nat'l Bank,	Daytona Beach
		The First National Bank,	Gainesville
		Atlantic National Bank,	Jacksonville
		Lake Forest Atlantic Bank,	"
		Southside Atlantic Bank,	"
		Springfield Atlantic Bank,	"
		Palatka Atlantic Nat'l Bank,	Palatka
		Sanford Atlantic Nat'l Bank,	Sanford
		Atlantic National Bank of West Palm Beach,	West Palm Beach
	Barnett National Securities Corp.	The Barnett National Bank,	Cocoa
		The Barnett National Bank,	DeLand
		The Barnett National Bank,	Jacksonville
		Murray Hill Barnett Bank,	"
		St. Augustine National Bank,	St. Augustine
Illinois	Illinois Shares Corporation	State Bank of Blue Island,	Blue Island
		Pullman Trust & Savings Bank,	Chicago
	General Bancshares Corp.	Standard State Bank,	"
		Bank of Benton,	Benton
		Illinois State Bank,	Quincy
		Bank of Zeigler,	Zeigler
	Amalgamated Clothing Workers	Amalgamated Trust & Savings Bank,	Chicago
Montana	First Bank Stock Corp.	Midland National Bank,	Billings
		Valley State Bank,	Billings
		First National Bank,	Bozeman
		Metals Bank & Trust Co.,	Butte
		Forsyth State Bank,	Forsyth
		First Chouteau County Bank,	Fort Benton

	First National Bank,	Great Falls
	First Westside Nat'l Bank,	
	First National Bank,	Havre
	First Nat'l B. & T. Co.,	Helena
	First Trust Co.,	Helena
	First National Bank,	Lewistown
	First National Park Bank,	Livingston
	First National Bank,	Miles City
	Southside National Bank,	Missoula
	Western Montana Nat'l	
	Bank,	
Montana Shares, Inc.	Northern Mont. State	
	Bank,	Big Sandy
	Miners National Bank,	Butte
	First State Bank,	Chinook
	Liberty County Bank,	Chester
	Citizens Bank of Montana,	Havre
	Farmers-Merchants Bank,	Rudyard
Northwest Bancorporation	Daly Bank & Trust Co.,	Anaconda
	Billings State Bank,	Billings
	First National Bank,	Dillon
	Great Falls National	
	Bank,	Great Falls
	Union Bank & Trust Co.,	Helena
	First National Bank,	Kalispell
	Northwestern Bank,	Lewistown
Western Bancorporation	Bank of Glacier County,	Cut Bank
	The Conrad National	
	Bank,	Kalispell
	Montana Bank,	Great Falls
	Texas Bank and Trust	
	Co.,	Dallas
Texas	First State Bank,	Eustace
	Powell State Bank,	Powell
	First National Bank,	Richland
	West National Bank,	West
	Riverside State Bank,	Fort Worth
The Fort Worth National	South Fort Worth State	
Bank	Bank,	
	Westside State Bank,	
	Gulfgate State Bank,	Houston
C.B. Investment Corp.	LaPorte State Bank,	LaPorte
	Citizens State Bank,	Seddy
	Wallis State Bank,	Wallis

*II. Bank Holding Companies and Their Subsidiary Banks Operating in States Which Limit Branch Banking\**

State	Bank Holding Company Operating in State	Affiliates in State and Location	
Iowa	Brenton Companies	Dallas County State Bank,	Atlel
		Wright County State Bank,	Clarion
		Brenton State Bank,	Dallas Center
		National Bank of Des Moines,	Des Moines
		Northwest Des Moines Nat'l Bank,	"
		South Des Moines Nat'l Bank,	"
		Eagle Grove State Bank,	Eagle Grove
		Palo Alto County State Bank,	Emmettsburg
		Poweshack County State Bank,	Grinnell
		Warren County B. & T. Co.,	Indianola
		Jefferson State Bank,	Jefferson
		First National Bank,	Perry
		Benton County B. & T. Co.,	Vinton
	Northwest Bancorporation	First National Bank,	Denison
		Iowa-Des Moines Nat'l Bank,	Des Moines
	Eastern Trust & Banking Company	First National Bank,	Mason City
		Live Stock National Bank,	Sioux City
		Eastern T. & B. Co.,	Bangor
		Guilford Trust Company,	Guilford
Maine	Eastern Trust & Banking Company	Lincoln Trust Co.,	Lincoln
		Millinocket Trust Co.,	Millinocket
New Mexico	Western Bancorporation	Bank of New Mexico,	Albuquerque
		First State Bank,	Gallup
		New Mexico B. & T. Co.,	Hobbs
		Roswell State Bank,	Roswell
		Santa Fe National Bank,	Santa Fe
		Aberdeen National Bank,	Aberdeen
		First National Bank,	Clark
South Dakota	First Bank Stock Corporation	First Potter County Bank,	Gettysburg
		First State Bank,	Higmore
		First National Bank,	Lemmon
		First National Bank,	Miller
		Nat'l Bank of South Dakota,	Sioux Falls

\* States which have statutes prohibiting branch banking in other counties only when a bank already exists in the county and which are similar to the Louisiana branch banking statute.

Washington	Northwest Bancorporation	First National Bank, First Nat'l Bank of the Black Hills, Northwest Security Nat'l Bank, First Citizens Nat'l Bank,	Aberdeen Rapid City Sioux Falls Watertown
	Old National Corporation	First National Bank, The Old National Bank, Forks State Bank,	Spokane Forks Port Angeles
	Union Bond & Mortgage Company	First National Bank, First American Nat'l Bank, Bank of Sequim,	Port Townsend Sequim

(This information is contained in a publication by the Association of Registered Bank Holding Companies, entitled "Bank Holding Company Facts -1961," dated July, 1961.)



Filed August 13, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

STATEMENT OF GENUINE ISSUES FILED BY INTERVENING  
DEFENDANT WHITNEY NATIONAL BANK IN JEFFERSON  
PARISH IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUM-  
MARY JUDGMENT.

Intervening defendant Whitney National Bank in Jefferson Parish files this Statement in accordance with the provisions of Local Civil Rule 9(h).

Intervening defendant has today filed its own Motion for Summary Judgment and agrees with plaintiffs that there does not exist in this case any genuine issue of material fact. The case is accordingly one appropriate for disposition by summary judgment. Intervening defendant, however, joins in Defendant Comptroller's Opposition to Plaintiffs' Cross Motion filed August 10, 1962, and takes exception to the inclusion in Plaintiffs' Statement of Material Facts, filed herein pursuant to Rule 9(h), of substantial quantities of loose conclusory language, quotations, legal argument and other material. The relevant facts which present the controlling questions of law herein are more succinctly and accurately summarized in intervening defendant's Statement of Material Facts As To Which There Is No Genuine Issue, filed today in connection with its Motion for Summary Judgment.

Respectfully submitted,

W. GRAHAM CLAYTOR, JR.,  
701 Union Trust Building,  
Washington 5, D. C.

MALCOLM L. MONROE,  
1424 Whitney Building,  
New Orleans 12, Louisiana.

August 13, 1962.

Filed August 22, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

RESPONSE OF DEFENDANT COMPTROLLER OF THE CURRENCY  
TO MOTION OF INTERVENING DEFENDANT FOR SUMMARY  
JUDGMENT

Comes now the defendant Comptroller of the Currency, through his undersigned counsel, and states to the Court that he has no objection to the granting of the motion of the Whitney National Bank in Jefferson Parish, Intervening defendant herein, for summary judgment. The supporting statement of material facts, filed by said intervening defendant pursuant to Local Civil Rule 9(h), is accurate and represents a fair statement of the essential facts in this case.

In addition to granting said motion, the Court should also grant the motion for summary judgment (or in the alternative the cross-motion to dismiss) filed herein by the defendant Comptroller of the Currency. The cross-motion of plaintiffs for summary judgment should be denied.

JOSEPH D. GUILFOYLE,

*Acting Assistant Attorney General.*

DONALD B. MACGUINEAS, &

DAVID V. SEAMAN,

*Attorneys, Department of Justice  
Attorneys for Defendant Comptroller  
of the Currency.*

*Of Counsel:*

DAVID C. ACHESON,

*United States Attorney.*

Filed August 22, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

RESPONSE OF DEFENDANT COMPTROLLER OF THE CURRENCY  
TO MOTION OF INTERVENING DEFENDANT FOR LEAVE TO  
AMEND ANSWER

Comes now the defendant Comptroller of the Currency, through his undersigned counsel, and states to the Court that he has no objection to the granting of the motion of the Whitney National Bank in Jefferson Parish, intervening defendant herein, for leave to file and serve a supplemental answer.

JOSEPH D. GUILFOYLE,

*Acting Assistant Attorney General.*

DONALD B. MACGUINEAS,

DAVID V. SEAMAN,

*Attorneys, Department of Justice  
Attorneys for Defendant Comptroller  
of the Currency.*

*Of Counsel:*

DAVID C. ACHESON,

*United States Attorney.*

Filed September 4, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

MOTION OF J. W. JEANSONNE, STATE BANK COMMISSIONER  
OF THE STATE OF LOUISIANA TO INTERVENE AS A PLAINTIFF  
HEREIN.

J. W. JEANSONNE, State Bank Commissioner of the State of Louisiana, respectfully moves the Court, pursuant to Rule 24 of the Federal Rules of Civil Procedure, for leave to intervene as a plaintiff in this action in order to assert the claim for relief set forth in his proposed complaint, a copy of which is hereto attached. The grounds for this motion are:

1. The representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound, directly or indirectly, by a judgment in this action; and

2. Applicant's claim and the main action have questions of law and fact in common; and

3. The plaintiffs herein rely, as grounds for their claims, upon Title 12 U.S.C. 36(c), Louisiana Revised Statutes 6:54; Title 12 U.S.C. 1841, et seq., and Act No. 275 of the Louisiana Legislature (Regular Session, 1962), while defendant and the intervening defendant herein, as grounds for their defense in this action, contend that the aforesaid Louisiana Statutes do not apply to the proposed actions of the defendant complained of in this proceeding; or that Louisiana Act 275 of 1962 is unconstitutional and void.

By law applicant for intervention is charged with the administration and enforcement of the banking laws of the State of Louisiana, including Act No. 275 of 1962, and it is accordingly essential to applicant's just and proper administration and application of said Louisiana Statutes, insofar as they affect all banks, bank holding companies and bank holding company subsidiaries doing business in

Louisiana, or which seek to do business in Louisiana; that applicant protect and foster in this action the purpose, intent and meaning of the Louisiana Statutes, the uniform application thereof and the public policy of the State of Louisiana as enunciated therein.

4. Intervention by the applicant will not delay or prejudice the adjudication of the rights of the original parties.

Applicant for intervention has noted the pendency of defendant's motion for summary judgment and motion to dismiss the complaint herein; plaintiffs' cross-motion for summary judgment; and intervening defendant's cross-motion for summary judgment, and will, if granted leave to intervene, file his opposition to defendant's and intervening defendant's said motions and will cross-move for summary judgment in favor of himself and the plaintiffs herein.

/s/ BENTLEY G. BYRNES,

*Attorney for Applicant for Intervention, and  
Assistant Attorney General of Louisiana.*

/s/ EDWARD L. MERRIGAN,

*Local Counsel of Record to Applicant.*

August 31, 1962.

Filed September 10, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

[Title omitted]

Civil Action No. 1857-62

COMPLAINT OF INTERVENING PLAINTIFF, J. W. JEANSONNE,  
LOUISIANA STATE BANK COMMISSIONER

J. W. JEANSONNE, the State Bank Examiner of Louisiana, intervening plaintiff herein, as and for his Complaint, respectfully alleges:

1

Intervening plaintiff is the State Bank Commissioner of Louisiana, and as such, is the officer charged with the administration of the banking laws of the State of Louisiana, including Louisiana Revised Statutes Title 6, Section 54, and Louisiana Act 275 of 1962 which became effective as the law of the State of Louisiana on July 10, 1962.

2

Intervening plaintiff files this Complaint on his own behalf as the State Bank Commissioner of Louisiana and on behalf and for the benefit of all banks located and doing business in the State of Louisiana which are subject to the jurisdiction of the State Bank Commissioner and which are subject to the provisions, restrictions and limitations provided in 12 U.S.C. 36(e) and L.R.S. 6:54, 12 U.S.C. 1841, et seq., and Louisiana Act 275 of 1962.

3

Defendant herein is the Comptroller of the Currency, an officer of the United States Government, who maintains his office in the Treasury Department within the territorial limits of the City of Washington, District of Columbia. Intervening defendant herein, Whitney National Bank in Jefferson Parish, is, upon information and belief, a subsidiary of a so-called bank holding corporation known as and by the

name of Whitney Holding Corporation, which, in turn, is a business corporation caused to be organized by the Whitney National Bank of New Orleans pursuant to the corporation laws of Louisiana.

4

The jurisdiction of the Court over the subject matter of this Complaint is predicated upon the provisions of 28 U.S.C. 1331, this being an action arising under the laws of the United States and statutes of Louisiana enacted under and pursuant to grants of authority or jurisdiction provided by the laws of the United States, and the matter in controversy exceeds the sum or value of \$10,000.00, exclusive of interest and costs; and upon the provisions of the District of Columbia Code (1961 Edition), which give this Court jurisdiction over all cases in law or in equity between parties, any of which shall be resident or found within the District of Columbia and which involve an amount in controversy in excess of the sum referred to hereinabove; and upon Rule 24 of the Federal Rules of Civil Procedure, which extends to intervening plaintiff herein the right to intervene in this action.

5.

Heretofore and for approximately seventy nine years, the Whitney National Bank of New Orleans has operated banking offices and facilities wholly within the City of New Orleans, Parish of Orleans, State of Louisiana; and said Bank presently conducts such operations in the Parish of Orleans under a certificate or certificates issued by the Comptroller of the Currency under the National Bank Act (12 U.S.C. 21, et seq.). The said Whitney National Bank of New Orleans is by far the largest banking institution in the City of New Orleans and the State of Louisiana, and is one of the largest banks in the entire southern portion of the United States. On June 30, 1961, the said Bank held approximately Thirty-nine (39%) percent of the total deposits in all banks in the Parish of Orleans, State of Louisiana, and Forty-four (44%) percent of all deposits of individuals, partnerships and corporations, although there are numerous other State and National Banks with offices and banking facilities in said Parish.

In addition, the said Whitney National Bank of New Orleans has also managed to accumulate and hold in its



banking facilities, located in New Orleans (Parish of Orleans), deposits of individuals, partnerships, and corporations emanating from the East Bank of the Mississippi River in Jefferson Parish, Louisiana (a Parish beyond the limits of Orleans), in an aggregate amount exceeding Thirty (30%) percent of all such deposits held by all banks having main banking offices and facilities in the same area of Jefferson Parish, Louisiana.

## 6

Under long standing provisions of the National Bank Act (12 U.S.C. 36(c)(e)(f)), National Banks such as Whitney National Bank, have been prohibited by law from opening branches or additional banking offices or facilities in any county, parish or state, other than that in which its main office or banking facilities are located, unless, state chartered banks are likewise specifically authorized by state law to so expand.

## 7

The laws of the State of Louisiana do not authorize State banks to establish, operate and expand new branch or additional banking facilities to any point within the State. On the contrary, the statutes of Louisiana (L.R.S. 6:54), as written and as historically applied by the Louisiana Bank Commissioner, expressly prohibit any bank with more than \$100,000.00 capital from opening a branch or an additional banking facility in any Parish (i.e. county) beyond the Parish in which its main office is located, if another bank is already located and operating in the Parish into which the large bank would like to expand.

## 8

The following banks, chartered under the laws of the State of Louisiana and subject to the jurisdiction of intervening plaintiff herein, are already located and have been operating in Jefferson Parish, Louisiana, and have invested large amounts of capital in their facilities so located, in reliance upon the aforementioned provisions and protections of the law:

Metairie Savings Bank & Trust Company  
 Merchants Trust & Savings Bank  
 Metropolitan Bank of Jefferson Parish

## 9

Furthermore, the following banks, chartered under the laws of the State of Louisiana and subject to the jurisdiction of intervening plaintiff herein, are located in and are and have been operating in Orleans Parish (City of New Orleans), Louisiana, in direct competition with the aforementioned Whitney National Bank of New Orleans, and like Whitney, are prohibited by the said statutory prohibitions from establishing any branches or banking offices beyond the limits of Orleans Parish in Jefferson Parish, Louisiana:

The Bank of New Orleans & Trust Company  
The Bank of Louisiana in New Orleans

## 10

Upon information and belief, in or about 1959, and with complete knowledge of the aforementioned Federal and State statutory prohibitions, Whitney National Bank of New Orleans commenced to consider ways and means whereby the prohibitions of the said Federal and State statutes might be circumvented so that Whitney National Bank of New Orleans would be able to locate, open and operate new branch or additional bank facilities beyond the limits of the Parish of Orleans and within that part of Jefferson Parish on the East bank of the Mississippi River wherein the State banks listed in Paragraph 8 hereinabove had already invested very large sums of capital and had established and were operating extensive, complete and adequate banking facilities.

## 11

After engaging in various ex parte conferences and meetings with the Comptroller of the Currency and various of his agents and employees, Whitney National Bank of New Orleans, upon information and belief, fashioned, adopted and executed the following corporate maneuvers in an attempt to circumvent the prohibitions of the aforementioned Federal and State statutes:

(a) Whitney National Bank caused to be organized a Louisiana corporation named "Whitney Holding Corporation". The sole initial capital investment of this corporation was \$350,000.00 taken directly from the capital funds

of the Whitney National Bank. In return for this investment said Bank received Fifty-six Hundred (5600) shares of stock of Whitney Holding Corporation which were distributed to the Bank stockholders as a stock dividend.

(b) Whitney National Bank then caused to be organized a non-operating association in the City of New Orleans, Parish of Orleans, under the name "Crescent City National Bank", to which the Comptroller of the Currency issued a national banking charter with full knowledge that said Crescent City National Bank was created, not to do business as a bank but solely for the purpose of serving as a separate entity into which Whitney National Bank of New Orleans could be merged. The Whitney Holding Corporation (completely controlled by Whitney National Bank, as aforesaid) then invested the entire \$350,000.00 it received from Whitney National Bank in this non-operating banking association and took in exchange therefor all of this "bank's" authorized stock.

(c) Whitney National Bank merged into the non-operating banking association, Crescent City National Bank, under the charter of said Crescent City National Bank, issuing Whitney Holding Corporation stock to the former stockholders of the Whitney National Bank and simultaneously changing the name of said bank from Crescent City National Bank to the original name Whitney National Bank of New Orleans, the result of such corporate maneuvers being that the Whitney Holding Corporation owned all of the stock in the merged Whitney National Bank, and the shareholders of the former Whitney National Bank of New Orleans owned all of the stock in the Whitney Holding Corporation.

(d) Whitney National Bank of New Orleans then provided \$650,000.00 of its capital funds to the Whitney Holding Corporation, which funds were to be employed by Whitney Holding Corporation to create a branch bank in Jefferson Parish, Louisiana under the name Whitney National Bank in Jefferson Parish. All stock in the branch bank, so organized, was issued to Whitney Holding Corporation and Whitney National Bank in Jefferson Parish was then to commence business in Jefferson Parish with \$650,000.00 in capital supplied directly by Whitney National Bank in New Orleans, thereby completely circumventing and evading the prohibiting statutes.

The aforementioned plan for circumvention of Federal and State banking laws and of the said proposal to commence a banking business in Jefferson Parish, Louisiana were not only in direct violation of the letter and intent of 12 U.S.C. 36 and Louisiana Revised Statutes 6:54, but were also in violation of the Federal Bank Holding Company Act (12 U.S.C. 1841, et seq.) and more particularly 12 U.S.C. 1845, 1846 and Louisiana Act No. 275 of 1962, which became effective on July 10, 1962.

In spite of the foregoing, the defendant, Comptroller of the Currency, without holding hearings and in the face of the aforementioned prohibitions of both Federal and State law, nevertheless approved the organization of the non-operating bank, Crescent City National Bank with capital funds supplied by the Whitney National Bank of New Orleans, the merger of Whitney National Bank of New Orleans into this non-operating bank; and the proposed branch operations of Whitney National Bank in Jefferson Parish under the name Whitney National Bank in Jefferson Parish. Notwithstanding the fact that the defendant, Comptroller of the Currency, well knew that the only reason for the intricate corporate maneuvers of Whitney National Bank were to enable it to expand its operations into Jefferson Parish, he is presently asserting that if this Honorable Court dissolves the injunction entered by Judge Holtzoff on July 10, 1962, he will immediately issue a certificate authorizing intervening defendant to conduct banking operations in Jefferson Parish, and has, in fact, filed an affidavit herein under date of August 9, 1962 wherein he states:

"5. On July 10, 1962, the Governor of the State of Louisiana approved Act No. 275, entitled 'An Act to define the bank holding Company,' to prohibit the formation of new bank holding companies, and to control the future expansion of existing bank holding companies and of their subsidiaries.

"6. Upon consideration of these subsequent developments, and after careful examination of the Louisiana statute, I have concluded that there has occurred no reason to alter the Comptroller's prior determination

that a certificate of authority should be issued to Whitney National Bank in Jefferson Parish, pursuant to 12 U.S.C. Section 27.

"7. Accordingly, if the preliminary injunction entered herein is vacated, and if the Whitney National Bank in Jefferson Parish so requests . . . it is my present intention to issue such certificate."

## 14

Moreover, the intervening defendant herein, while admitting that it is a subsidiary of a bank holding company within the definitions contained in both the aforementioned Federal Bank Holding Company Act and Louisiana Act No. 275 of 1962, alleges in this action in its proposed Supplemental Answer:

"V. Intervening Defendant avers that Act 275 furnishes no basis for granting the plaintiffs' request for declaratory relief or for an injunction . . . because Act 275 does not apply to the Comptroller of the Currency or to a national bank such as Whitney National Bank in Jefferson Parish.

"VI. Intervening Defendant further avers that Act 275, if applicable, violates the Statutes and Constitution of the United States.

"Wherefore . . . Intervening Defendant prays that this Court enter a judgment declaring that Louisiana Act 275 of 1962 does not apply to either the Defendant Comptroller or the Intervening Defendant. In the alternative, Intervening Defendant further prays for a judgment declaring that the said Act 275 is unconstitutional and void."

## 15

Intervening Plaintiff, charged as aforesaid with the administration of the banking laws of Louisiana, including Act 275 of 1962, and with the supervision and control of banks, bank holding companies and their subsidiaries in Louisiana, and with the protection of all banks doing business in Louisiana under the laws of Louisiana against unlawful and improper bank establishments and operations, respectfully asserts and alleges:

(a) Defendant Comptroller is without authority to issue any certificate to intervening defendant herein, authorizing it to open and operate banking offices in Louisiana in violation of Federal and State statutory prohibitions;

(b) Intervening defendant herein, like all banks and bank holding company subsidiaries proposing to do business in Louisiana, is subject to the prohibitions of 12 U.S.C. 36(c), Louisiana Revised Statutes 6:54, 12 U.S.C. 1841, et seq., and Louisiana Act 275 of 1962, and is accordingly prohibited from opening and operating banking offices in Jefferson Parish, Louisiana.

(c) Louisiana Act 275 of 1962 is a Constitutional statute, which together with 12 U.S.C. 1845, 1846 specifically prohibits intervening defendant, admittedly a subsidiary of a corporation organized under the laws of Louisiana which is subject to regulation by the State of Louisiana, from opening banking facilities in Jefferson Parish so long as more than Seventy-five (75%) percent of intervening defendant's outstanding stock is owned by a bank holding corporation.

## 16

Intervening plaintiff respectfully alleges further that the issuance by defendant of any certificate authorizing Whitney National Bank of New Orleans, through the device of the Whitney Holding Corporation, unlawfully to establish banking offices in Jefferson Parish, Louisiana, with funds taken directly from the Whitney National Bank of New Orleans, would cause chaos in the entire banking industry throughout the State of Louisiana, and would, contrary to the public policy of Louisiana expressed in Act 275 of 1962 and underlying L.R.S. 6:54, eliminate all effective protections historically fostered by the laws of the United States and the State of Louisiana for the growth of independent unit banks and to insure effective competition among all banking institutions. Moreover, the granting of a certificate to intervening defendant herein pursuant to any finding that 12 U.S.C. 1841, et seq. and Louisiana Act 275 of 1962, read together, do not exclude Louisiana bank holding corporations from opening bank facilities throughout Louisiana so long as the facilities are simply chartered as National banks, would place in the hands of intervening defendant and its present holding corporation concentration of control over the banking industry of Louisiana,



prohibited to all State banks, and would create means for eliminating independent unit banks and the probable monopoly control of banking in Louisiana by Whitney National Bank.

## 17

More specifically, with reference to Jefferson Parish, Louisiana, the granting of a certificate to intervening defendant herein would bring to bear upon all of the State banks located therein a new, destructive, unlawful competition from the combined capital resources, lending power and management of the Whitney National Bank of New Orleans, and would place in jeopardy the capital investments in said banks.

By law, the State chartered banks located in Jefferson Parish are prohibited from opening and operating branch banks in Orleans Parish, Louisiana, in competition with Whitney National Bank of New Orleans, and each is prohibited by law from creating, establishing and operating with its own capital resources a holding company system controlling bank offices in Orleans Parish or elsewhere in the State of Louisiana. Each of these banks has been established and has been operating in Jefferson Parish, Louisiana in reliance upon Federal and State statutes which prohibit other National and State banks from interfering with, damaging or impeding their banking businesses and facilities by means of unlawful expansion and encroachments.

## 18

The State chartered banks located in Orleans Parish, Louisiana are relatively small competitors of the Whitney National Bank of New Orleans. Many of the depositors and borrowers of each of these banks either reside in or have offices located in Jefferson Parish, Louisiana, but nevertheless maintain substantial deposits or loan accounts at the banking offices of such banks. Each of these banks is prohibited by law from expanding into Jefferson Parish by means of the establishment of branch facilities or by the device of creating a holding company through which it may simply siphon its capital funds into banking offices in Jefferson Parish or in other locales in Louisiana. If the intervening defendant were licensed to open its facilities in Jefferson Parish, Louisiana, in contravention of these same



statutory prohibitions; said defendant and Whitney National Bank of New Orleans would immediately be able to attempt to divest and appropriate to themselves substantial portions of the banking business and profits now enjoyed by the said Orleans Parish State banks from sources in Jefferson Parish, and would cause these State banks to suffer severe, irreparable damage and loss far exceeding the jurisdictional monetary limits of this Court.

## 19

Finally, if defendant Comptroller is permitted by this Court to ignore and avoid the prohibitions of the aforementioned Federal and State statutes, as he proposes to do in this action, there would remain no effective bar to the farther expansion of Whitney Holding Corporation through each and every Parish in the State of Louisiana, provided, in each Parish, the holding corporation expanded simply by means of the establishment of National rather than State bank facilities.

Upon information and belief, Whitney Holding Corporation was the only bank holding corporation organized and proposed to commence banking operations in the State of Louisiana on July 10, 1962, when Act No. 275 of 1962 became effective, and since said Act now prohibits "any action to be taken which results in a company or a bank becoming a bank holding company", this would place Whitney Holding Corporation and the Whitney National Bank in an absolute monopoly position in the banking industry of Louisiana, free to expand in any and every direction it chooses, while *all other State and National banks* are prohibited by law from creating Louisiana bank holding companies for any like expansion.

The granting of such power and control to the Whitney organization would necessarily subject all other banks in Louisiana to new, oppressive and unfair competition from the combined capital resources of an ever expanding bank holding company system supported and fostered by the defendant Comptroller, which even at the outset of its expansion program is the dominant banking institution in the entire State of Louisiana.

Any holding by this Court in this action that Louisiana Act No. 275 of 1962 is unconstitutional, or that said Act may not properly and effectively be applied to prevent and prohibit intervening defendant herein, a wholly owned subsidiary of a Louisiana corporation, Whitney Holding Corporation, from opening branch offices would deprive or hamper intervening plaintiff in fulfilling his official obligation to enforce equally and justly the prohibitions of this statute, and would render it impossible for the banking laws of Louisiana to be administered and applied justly, constitutionally and in accordance with the expressed public policy of the State of Louisiana and the Congress of the United States.

WHEREFORE, intervening plaintiff prays:

(a) That this Court enter judgment herein declaring that defendant, Comptroller of the Currency, is prohibited by 12 U.S.C. 36, 12 U.S.C. 1841, et seq., Louisiana Revised Statutes 6:54, and Act No. 275 of the 1962 Regular Session of the Louisiana Legislature from issuing to the Whitney National Bank of New Orleans, the Whitney Holding Corporation and/or the Whitney National Bank in Jefferson Parish a Certificate or Certificates of Authority authorizing them, or any of them, to establish, open and operate new branch bank facilities or additional banking offices or any other bank facilities in Jefferson Parish, State of Louisiana; and

(b) That this Court make permanent the preliminary injunction entered herein by this Court on July 10, 1962; and

(c) That this Court grant such other and further relief as may seem just and proper in the premises.

s/ BENTLEY G. BYRNES,

*Attorney for J. W. Jeansonne,  
State Bank Commissioner of the  
State of Louisiana, and  
Assistant Attorney General  
of Louisiana.*

s/ EDWARD L. MERRIGAN,

*Local Counsel of Record.*

Filed September 5, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

[Title omitted]

Civil Action No. 1857-62

PLAINTIFFS' OPPOSITION TO INTERVENING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND MOTION FOR LEAVE TO AMEND AND TO DEFENDANT'S MOTION TO DISMISS

Come now the plaintiffs, who oppose, on all of the grounds set forth in the papers and points and authorities in support of the Motion for Preliminary Injunction herein and in support of Plaintiffs' Cross-Motion for Summary Judgment,

- (a) Defendant's Motion to Dismiss,
- (b) Intervening defendant's Cross-Motion for Summary Judgment, and Motion for Leave to Amend its Answer herein.

Plaintiffs shall, in accordance with local Rule 9(h), serve and file a "Statement of Genuine Issues Which Must Be Litigated" with reference to said defendants' motions for summary judgment, and will file additional Points and Authorities in Opposition to the said Motion to Dismiss and Cross Motion for Summary Judgment as soon as the typing of same after the Labor Day holidays can be completed.

With reference to intervening defendant's motion for leave to serve and file an Amended Answer, plaintiffs will consent to such motion if defendant and intervening defendant, pursuant to Rule 15(b) of the Federal Rules of Civil Procedure, will consent (a) to an amendment of the complaint herein whereby Paragraphs 13, 20 and the Prayer for Relief thereof would be read to include Louisiana Act 275 of 1962, as one of the statutes alleged to be violated, along with the federal Bank Holding Company Act, or (b) that the issue of the alleged violation of Louisiana Act 275 of 1962 be treated "in all respects as . . . raised in the pleadings" herein.

EDWARD L. MERRIGAN,  
*Attorney for Plaintiffs.*

Filed September 6, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

[Title omitted]

Civil Action No. 1857-62

PLAINTIFFS' "STATEMENT OF GENUINE ISSUES" IN OPPOSITION  
TO DEFENDANT'S AND INTERVENING DEFENDANT'S CROSS MO-  
TION FOR SUMMARY JUDGMENT

In accordance with the provisions of *Rule 9(h)* of this Court's Rules, plaintiffs file the following "Statement of Genuine Issues" in opposition to the cross-motion of intervening defendant, Whitney National Bank in Jefferson Parish, for summary judgment, in which motion defendant Comptroller has concurred:

1. Plaintiffs deny that Whitney Holding Corporation is presently "duly registered under the Bank Holding Company Act of 1956, 12 U.S.C. §1841-48" as alleged in Paragraph 1 of intervening defendant's proposed statement of admitted facts. The status of Whitney Holding Corporation under said Act is the subject of incomplete litigation in the Fifth Circuit Court of Appeals under 12 U.S.C. §1848.

2. Plaintiffs deny that the withdrawal of \$650,000. from the capital funds of Whitney National Bank of New Orleans for immediate transfer by Whitney Holding Corporation to Whitney National Bank in Jefferson Parish was or was intended, in form or in substance, to be a mere ordinary "dividend" to the newly created Whitney Holding Corporation, as alleged in Paragraphs "2" and "11" of the Statement of Intervening Defendant of Material Facts as to Which There Is No Genuine Issue. On the contrary, the evidence of record herein, contained wholly in defendant's own written exhibits, shows:

(i) In a letter to his shareholders, dated October 27, 1961, the President of Whitney National Bank of New Orleans, wrote to his shareholders as follows:

"We propose to put \$350,000. of the capital funds of the Whitney National Bank into a Louisiana busi-

ness corporation under the title—"Whitney Holding Corporation" . . .

"The Crescent City National Bank (to be named Whitney National Bank of New Orleans) will provide \$650,000. to Whitney Holding Corporation with which Whitney Holding Corporation will cause to be created the Whitney National Bank in Jefferson Parish. . . .

(ii) In Exhibit K to its application to the Federal Reserve Board, signed by Whitney Holding Corporation, the following admission appears:

*"Financial Condition of Applicant*—Applicant will own all of the outstanding shares of the Whitney National Bank of New Orleans and the proposed Jefferson Parish Bank, and contemplates no other financing. Any additional cash needed will be obtained from the undivided profits of the operating banks."

(iii) In his testimony before the Federal Reserve Board on January 17, 1962, Mr. Keeln Berry, President, Whitney National Bank of New Orleans, testified as follows (*Defendant's Ex. 4, page 13*):

"The Whitney National Bank of New Orleans will continue in exactly the same form as it is now *except for the withdrawal of \$650,000. in capital funds which will be put into the Jefferson Parish unit as capital for it.*"

(iv) In testimony before the Federal Reserve Board on January 17, 1962, Clem H. Sehrt, attorney for minority stockholders in the Whitney National Bank of New Orleans, stated (*Defendant's Ex. 4, pages 42, 46*):

"It (Whitney Holding) exists how? It exists by virtue of the funds supplied to it by Whitney National. . . .

"But if it is all accomplished, they dip in and create a Jefferson Parish bank . . . for operation with Whitney funds."

Thus, as alleged in support of plaintiffs' motion for summary judgment, and as proved by defendant's own testimony and exhibits, the aforementioned \$350,000. and \$650,000. withdrawals from the capital funds of Whitney National

Bank of New Orleans were, in fact, and were intended to be nothing but the siphoning off of capital from Whitney National Bank of New Orleans for immediate transfer to the capital of the new branch of that bank, the intervening defendant herein.

3. There is no evidence of record and plaintiffs accordingly deny that Whitney National Bank in Jefferson Parish became a "national banking association on May 11, 1962", as alleged in Paragraph 9 of intervening defendant's statement of allegedly conceded material facts. Plaintiffs likewise deny the facts and conclusions drawn by defendant in said Paragraph 9 from two letters not in evidence herein.

4. Plaintiffs deny the statement contained in Paragraph 10 of intervening defendant's proposed statement of non-controverted facts that "there were no dissenting shareholders". The evidence of record herein is to the contrary, as follows:

In his testimony before the Federal Reserve Board on January 17, 1962, Mr. Keelin Berry, President of Whitney National Bank of New Orleans, testified (*Defendant's Ex. 4, pages 10, 11*):

"On the recommendation of the Comptroller, we proceeded with our stockholders' meeting submitting to stockholders our entire program and the reason for it.

"On November 29th, last year, our stockholders met. We had 105,824 shares out of 112,000 outstanding represented at the meeting; 93,645 shares voted in favor of the program and 12,145 shares voted against it."

Representatives of *dissenting shareholders* of Whitney National Bank of New Orleans appeared before the Federal Reserve Board in January, 1962 to oppose the proposals (*Defendant's Ex. 4, pages 25-47*):

Furthermore, the aforesaid statement in Paragraph 10 of the proposed statement of conceded facts is made in the face of the affidavit of E. A. Waffenschmidt, Cashier and Assistant Vice President of Whitney National Bank of New Orleans, filed herein by intervening defendant under date of August 3, 1962. Attached to that affidavit is a sheet entitled "Tabulation of Vote", certified by Judges of Election. This Tabulation, on file in this action shows, that 5,002 shares of stock were voted in person against the proposed plan here in litigation, while 7,143 shares voted against same



*by proxy*. A copy of said Tabulation Sheet is annexed hereto for the Court's convenience.

5. Plaintiffs deny, *by reason of, complete lack of any admissible evidence herein*, that on *May 18, 1962*, "the shareholders of the old Whitney National Bank of New Orleans exchanged their shares of stock for stock of Whitney Holding Corporation"; and that on *May 18, 1962*, "the former shareholders of the old Whitney National Bank of New Orleans owned all of the stock of Whitney Holding Corporation which in turn owned all of the stock ... of the new Whitney National Bank of New Orleans ... and of the newly organized Whitney National Bank in Jefferson Parish", all as alleged in *Paragraph 10* of intervening defendant's proposed statement of material facts alleged not to be in issue.

The mere hearsay affidavit of James J. Saxon, dated June 20, 1962, relied upon by intervening defendant in support of these allegations, is *not* admissible proof of these allegations.

-6. Plaintiffs deny, *for lack of any admissible evidence herein*, that "the first meeting of the stockholders of Whitney National Bank in Jefferson Parish was held on *May 24, 1962*"; that, on said date, "directors of the said bank were properly elected"; that, on said date, the directors "paid the price for their qualifying shares", were "sworn, qualified and (took) office as directors". For the same reason, plaintiffs deny that, on *May 24, 1962*, "by-laws were adopted", "officers of the bank have been elected, and stock of the Federal Reserve Bank of Atlanta in the amount of \$18,000, has been subscribed and paid for by Whitney National Bank in Jefferson Parish", all as alleged in *Paragraph 12* of intervening defendant's proposed statement of material facts.

The mere hearsay affidavit of James J. Saxon, dated June 20, 1962, relied upon by intervening defendant in support of these allegations, is *not* admissible proof thereof.

Furthermore, an exhibit filed upon this motion by intervening defendant herein completely contradicts the allegations of said *Paragraph 12* of intervening defendant's statement, in that it purports to show, *under oath*, that the first meeting of the shareholders of intervening defendant occurred on *May 10, 1962* and that directors were elected at that time (See *Exhibit 4*, annexed to *Gilly* affidavit of August 3, 1962, copy of which is also annexed hereto).



In addition, in *Paragraphs 10 and 11* of intervening defendant's proposed statement of conceded facts, it is alleged, contrary to said *Exhibit 4*, that Whitney Holding Corporation did not become the owner of "all the stock... of the newly organized Whitney National Bank in Jefferson Parish" until on or after *May 18, 1962*. Furthermore, in *Paragraph 12* of said proposed "material facts", it is alleged that the directors of intervening defendant did not pay "the purchase price for their qualifying shares" until on or after *May 24, 1962*.

For all of these reasons, it is submitted that intervening defendant's Rule 9(h) Statement refers not only to facts "in issue" herein, but to facts which are incorrect and untrue under said defendant's own sworn written exhibits herein.

7. Plaintiffs deny that "the present suit was filed on June 9, 1962, just as the Comptroller of the Currency was about to issue a Certificate of Authority... permitting the Whitney National Bank in Jefferson Parish to commence banking operations", as alleged in *Paragraph 13* of intervening defendant's statement of alleged conceded material facts. On the contrary, on June 8, 1962 (and as partially conceded by defendants in *Paragraph 14* of intervening defendant's statement of alleged conceded facts), Robert Bloom, Esq., Counsel for defendant Comptroller, advised plaintiffs' counsel that since the Comptroller was not then present in Washington and since his office was not yet ready to issue the certificate herein, in any event, the Comptroller would accordingly voluntarily agree to withhold issuance of his certificate until this Court determined plaintiffs' motion for a preliminary injunction.

8. Plaintiffs deny *Paragraph 17* of intervening defendant's proposed statement of conceded material facts, and state that the allegations contained therein are patently untrue and groundless, particularly that portion thereof which states "Had it not been for the institution of these proceedings on June 9, 1962... the Whitney National Bank in Jefferson Parish (would have commenced) banking operations on or about that date and such banking operations would in fact have been commenced at that time".

Annexed hereto, for the convenience of the Court, is an affidavit made on July 3, 1962 in New Orleans, Louisiana by

*Leon M. Trice*, a commercial photographer in that city for 40 years, together with photographs taken by him on *July 3, 1962*, almost one month after *June 9, 1962*, showing

(a) the proposed location at 4407 Jefferson Highway of the intervening defendant's alleged temporary office. On that date, it was a self service "Washateria"; and

(b) the proposed location, across the highway, where the intervening defendant allegedly intends to construct a permanent office. It was, on July 3, 1962, still represented as the "Royal Tourist Court". A "For Sale" sign clearly appears on the property in front.

Moreover, by affidavit dated June 16, 1962 on file herein, James J. Gilly, President of intervening defendant herein, swore that the lease on the premises at No. 4407 Jefferson Highway was not even scheduled to become effective until *June 15, 1962*, i.e., after *June 9, 1962*, the date upon which this action was commenced. A copy of said lease submitted to the Court by intervening defendant is likewise annexed hereto in support of plaintiffs' objections to said defendant's alleged "material facts as to which there are no issue".

9. Plaintiffs deny the allegations contained in *Paragraph 3* of intervening defendant's proposed conceded facts for the same reasons, and on the basis of the same evidence hereto annexed.

10. Plaintiffs deny the allegations contained in *Paragraph 7* of intervening defendant's statement to the extent that same imply plaintiffs' agreement that the Federal Reserve Board scheduled and held in Louisiana the normal or regular statutory public hearing provided for in *12 U.S.C. §1842*, and to the extent same imply that plaintiffs had actual notice of the informal hearing conducted by said Board in Washington, D. C. in January, 1962. Furthermore, plaintiffs did apply to said Board for further hearings and reconsideration of the application of Whitney Holding Corporation, but said application was denied without hearing.

WHEREFORE, plaintiffs submit that substantial genuine issues exist with reference to the material facts relied upon by defendant and intervening defendant in support of their

respective motion and cross-motion for summary judgment herein, and that same must accordingly be denied. Simultaneously, however, there are herein facts as to which no genuine issues exist which direct that plaintiffs' motion for summary judgment be granted, and plaintiffs pray once again that such judgment be granted and entered herein.

EDWARD L. MERRIGAN,  
*Attorney for Plaintiffs.*

Filed September 6, 1962

EXHIBIT "O"

PLAINTIFFS' EXHIBITS

PLYMOUTH CORDAGE COMPANY  
Established 1824

Southern District Office: 600 St. George Avenue.  
P.O. Box 10215,  
New Orleans 21, Louisiana

12 July 1961.

Whitney National Bank,  
Main Office,  
New Orleans, Louisiana.

Attention: Mr. Morgan Whitney  
Gentlemen:

I understand that you are contemplating the establishment of a branch bank to be located in the vicinity of Jefferson Highway.

At present we are carrying our pay roll account with your branch at Carrollton and Oak. Our subsidiary company, Cordage Sales Company, Inc. has its regular account with your main branch downtown.

My personal account is with your main branch, although I did open a small account with National Bank of Commerce in Jefferson Parish, when they opened on Jefferson Highway. This was purely for the convenience of location to my office.

While I cannot speak for our management at Plymouth,

I can definitely state that a branch of your institution located on Jefferson Highway would mean a great deal to us all in the convenience of handling our accounts.

I shall continue in my efforts to increase our activity with the Whitney, and your contemplated new office should certainly strengthen your sales effort with our management to secure a greater portion of our New Orleans business.

Sincerely yours,

PLYMOUTH CORDAGE COMPANY,  
C. H. BABINGTON,  
*Southern District Manager.*

CHB/mo

Filed September 6, 1962

EXHIBIT "P"

CHARLES DENNERY, INC.  
Established 1894  
P. O. Box 10094  
New Orleans 21, Louisiana

July 12, 1961.

Whitney National Bank of New Orleans,  
Mr. K. Berry, President,  
New Orleans, Louisiana

Dear Sir:

It would be a distinct advantage to us to have a banking institution established in the Parish of Jefferson, with banking facilities and service such as the Whitney National Bank of New Orleans renders.

Sincerely,

CHARLES DENNERY, INC.  
GEORGE LE BEAU,  
*Treasurer.*

GL:jd

Filed September 6, 1962

EXHIBIT "Q"

O. E. ALEXANDER, JR.  
3600 James Drive  
Metairie, Louisiana

July 12, 1961.

Dear Mr. Carpenter:

I was indeed pleased to hear of the Whitney National Bank's plans for expansion, which possibly might include a Branch located somewhere on Jefferson Highway.

Of course, this would make it very convenient for me and certainly I feel it would be convenient for people residing in this area, either on a personal or business basis, to be able to do their banking in a facility that is located much closer to the area instead of having to do their banking on the basis of going downtown each time.

I would certainly like to see such an expansion program take place on the part of Whitney National Bank.

Yours very truly,

O. E. ALEXANDER, JR.

Mr. W.M. A. CARPENTER,  
*Vice President*

Whitney National Bank of New Orleans,  
New Orleans, Louisiana.

Filed September 6, 1962

EXHIBIT "R"

RAUSCH NAVAL STORES Co.,  
Incorporated  
Manufacturers Dealers and Exporters  
Turpentine, Rosin, Pine Tar, Navy Pitch  
New Orleans, U.S.A.

July 12, 1961.

Whitney National Bank of New Orleans  
St. Charles & Gravier Streets,  
New Orleans, Louisiana.

Attention: Mr. J. W. Berry, *President*

Gentlemen:

We have for many years enjoyed and taken pride in our banking association with the Whitney National Bank of New Orleans.

Formerly our offices were located in the business section of New Orleans; however, it was elected that for the purpose of achievement and advancement of the corporation, it was necessary for us to combine the office with warehouse operations. Such move was accomplished, which has resulted in our steady and continued growth.

It was very difficult to obtain sufficient property in Orleans Parish to care for our expansion program which resulted in our location in Jefferson Parish some twelve years ago.

You are quite cognizant that some 85% of our business sales are for foreign consumption. Because of the nature of our business it is most necessary we are in close contact with the Whitney National Bank for discussion of finance, credit letters, conditions in countries where we sell our materials, as well as customers involved—all of which consumes much time and effort in our organization and certainly, we know consumes your valuable time.

It is a well known fact that many other firms have located in the East bank area of Jefferson Parish, which has assisted greatly in its phenomenal growth. With this in mind,

we place before you for your consideration the possibility of your establishing a branch bank in this area, which we feel would be a distinct advantage and convenience to the many firms that depend on the banking facilities of the Whitney.

Yours very truly,

RAUSCH NAVAL STORES CO. INC.  
WILLIAM W. RAUSCH,  
*Vice President.*

WWR:cr

Filed September 6, 1962

EXHIBIT "T"

BOYCE MACHINERY CORPORATION  
7330 Florida Street,  
P. O. Box 1308,  
Baton Rouge, Louisiana,  
Wa 1-8131

12 July 1961.

Mr. James Gilly, Jr.,  
Whitney National Bank,  
New Orleans, Louisiana.

Dear Mr. Gilly:

I understand your bank is considering the formation of a new bank to be located in Jefferson Parish. This certainly is good news for us. As you know, our office in the New Orleans area is located in Jefferson Parish and, since the major portion of our banking is done with your firm, this new facility would certainly make it much more convenient for us to continue our relationship with you.

Needless to say, should your bank move into Jefferson Parish, a great number of our employees in that area would take advantage of your services.

Again, let us congratulate you upon hearing this news.

Yours very truly,

STATEN H. WILSFORD,  
*Vice-President.*

SHW:jt



Filed September 6, 1962

EXHIBIT "U"

CRESCENT MATERIALS SERVICE, INCORPORATED  
4829 Jefferson Highway,  
Post Office Box 10097,  
New Orleans 21, Louisiana

July 11, 1961.

Whitney National Bank of N. O.  
228 St. Charles Avenue,  
New Orleans 12, La.

Att.: Mr. J. P. Monroe, *Vice-President*

Gentlemen:

This company is a wholesale building material supply company doing business in the Parish of Jefferson, State of Louisiana. The nature of our business requires that we have daily banking transactions, frequently requiring several trips in a day.

The purpose of this letter is to request that the Whitney Bank consider the establishment of a banking facility in Jefferson Parish. The establishment of a Branch in this area would certainly be of great assistance to long time accounts such as ourselves and we believe would benefit the Bank.

Your consideration of this matter will be greatly appreciated.

Yours very truly,

CRESCENT MATERIALS SERVICE, INC.  
C. O. LYLE, JR.,

*President.*

COL/m

Filed September 6, 1962

## EXHIBIT "V-1"

Form F.R. Y-1

## EXHIBIT F

## Statutory Factors .

1. *History:*

Applicant is a proposed new corporation created for the sole purpose of holding all of the stock (except directors' qualifying shares) of the present Whitney National Bank of New Orleans. The plans by which that ownership is brought about are described in Exhibit D(3) hereof. The Whitney National Bank of New Orleans as owned by the Whitney Holding Corporation will have the 43 million of capital, surplus and undivided profits as appears in the present Whitney National Bank statement. Its financial history appears in Exhibit M, having been established in 1883 and having served the New Orleans community faithfully and continuously since that date. The directors and officers of the Crescent City National Bank (to be named immediately Whitney National Bank of New Orleans) will be the same as those now serving the present Whitney National Bank.

2. *Prospects:*

The prospects of the present Whitney National Bank of New Orleans are reflected in the earnings figures given in Exhibit M-3 hereof. It will continue to serve the Parish of Orleans, which coincides with the City of New Orleans, as it has in the past with no presently contemplated change in its facilities.

The proposed new Whitney National Bank in Jefferson Parish which Applicant asks permission of the Federal Reserve Board to create and acquire will be provided with initial capital, surplus and undivided profits of \$650,000.00. As explained elsewhere this cash will be derived from Whitney National Bank of New Orleans.

Filed September 6, 1962

Form F.R. Y-1

EXHIBIT "V-2"

EXHIBIT K

Financial Condition of Applicant

Applicant will own all of the outstanding shares of the Whitney National Bank of New Orleans and the proposed Jefferson Parish Bank, and contemplates no other financing. Any additional cash needed will be obtained from the undivided profits of the operating banks.

Attached is a pro forma balance sheet of the applicant as of the completion of the program permission for which is hereby requested, but based on figures of June 30, 1961. (Exhibit K-1)

EXHIBIT L

Financial History of Applicant

None—See Exhibit M

EXHIBIT M

Financial Condition and History of the Subsidiary Banks

Information with respect to the financial condition and history of each of the Subsidiary Banks, as follows:

1. Crescent City National Bank (to be immediately named Whitney National Bank of New Orleans) and Whitney National Bank in Jefferson Parish have no financial history. We are therefore attaching information concerning the present Whitney National Bank of New Orleans as follows:
  - (a) The published reports of conditions of the Whitney National Bank of New Orleans for the past 5 years marked Exhibits M-2-A, M-2-B, M-2-C, M-2-D and M-2-E.
  - (b) A summary analysis of surplus and undivided profits, and of each reserve account included as a part of capital structure in reports of conditions for the past 5 years, marked Exhibit M-3.

- (c) A summary analysis of each general or unallocated valuation reserve account applicable to the loan account or the securities account for the past 5 years, marked Exhibit M4.

Filed September 6, 1962 .

**EXHIBIT "V-3"**

**Statement of Whitney Holding Corporation  
(Pro Forma)**

Investments		Assets
112,000	shares Capital Stock (\$25 Par Value)	
	Whitney National Bank of New Orleans.....	\$42,380,000 00
20,000	shares Capital Stock (\$25 Par Value)	
	Whitney National Bank in Jefferson Parish.....	650,000 00
		<u>\$43,030,000 00</u>
Liabilities.....		Liabilities
		None
Capital		
1,120,000	shares (no par value) Common Stock.....	\$43,030,000 00
		<u>\$43,030,000 00</u>

Filed September 6, 1962

## EXHIBIT "V-4"

## WHITNEY NATIONAL BANK OF NEW ORLEANS

Established 1883

## Condensed Statement of Condition as of December 30, 1960

Resources	
Cash and Due from Banks .....	\$112,953,707.18
U. S. Government Obligations .....	135,142,754.47
State, Municipal and Other Public Bonds .....	7,221,853.55
Other Bonds and Securities .....	956,832.20
Loans and Discounts .....	206,385,793.69
Bank Premises .....	7,638,074.58
Other Real Estate .....	116,451.53
Customers' Liability Account of Acceptances .....	544,007.04
Accrued Income and Other Assets .....	2,082,898.49
<b>Total</b> .....	<b>\$473,042,372.73</b>
Liabilities	
Deposits .....	\$425,416,754.30
Acceptances .....	562,058.54
Dividend Payable January 3, 1961 .....	112,000.00
Reserve for Taxes, Accrued Interest and Expenses .....	5,101,871.58
Other Liabilities .....	105,635.87
Capital Stock .....	\$ 2,800,000.00
Surplus .....	27,200,000.00
Undivided Profits .....	11,744,052.44
<b>Total</b> .....	<b>\$473,042,372.73</b>

Member of The Federal Deposit Insurance Corporation.

Filed September 6, 1962

## EXHIBIT "V-5"

## WHITNEY NATIONAL BANK OF NEW ORLEANS

Established 1883

## Condensed Statement of Condition, December 31, 1959

Resources		
Cash and Due from Banks		\$114,377,942 65
U. S. Government Obligations		112,458,847 04
State, Municipal and Other Public Bonds		10,253,172 02
Other Bonds and Securities		956,974 71
Loans and Discounts		213,264,134 38
Bank Premises		6,334,829 55
Other Real Estate		39 00
Customers' Liability Account of Acceptances		840,645 97
Accrued Income and Other Assets		2,177,946 43
Total		\$460,664,531 75
Liabilities		
Deposits		\$418,309,507 79
Acceptances		996,932 83
Dividend Payable January 2, 1960		112,000 00
Reserve for Taxes, Accrued Interest and Expenses		2,410,014 74
Other Liabilities		101,422 17
Capital Stock	\$ 2,800,000 00	
Surplus	27,200,000 00	
Undivided Profits	8,734,654 22	
Total		\$460,664,531 75

Depository of the United States Government, State of Louisiana and City of New Orleans. Member of the Federal Deposit Insurance Corporation.

Filed September 6, 1962

## EXHIBIT "V-6"

WHITNEY NATIONAL BANK OF NEW ORLEANS

Established 1883

## Condensed Statement of Condition, December 31, 1958

Resources		
Cash and Due from Banks		\$107,759,789 32
U. S. Government Obligations		148,776,471 16
State, Municipal and Other Public Bonds		12,557,259 86
Other Bonds and Securities		956,962 12
Loans and Discounts		190,338,206 50
Bank Premises		4,428,634 98
Other Real Estate		39 00
Customers' Liability Account of Acceptances		1,074,881 46
Accrued Income and Other Assets		2,470,716 51
<b>Total</b>		<b>\$468,383,161 01</b>
Liabilities		
Deposits		\$427,327,009 39
Acceptances		1,111,956 96
Dividend Payable January 2, 1959		112,000 00
Reserve for Taxes, Accrued Interest and Expenses		3,750,096 05
Other Liabilities		93,998 87
Capital Stock	\$ 2,800,000 00	
Surplus	27,200,000 00	
Undivided Profits	5,968,099 74	
		35,968,099 74
<b>Total</b>		<b>\$468,383,161 01</b>

Depository of the United States Government, State of Louisiana and City of New Orleans. Member of the Federal Deposit Insurance Corporation.



Filed September 6, 1962

## EXHIBIT "V-7"

## WHITNEY NATIONAL BANK OF NEW ORLEANS

Established 1883

## Condensed Statement of Condition, December 31, 1957

Resources	
Cash and Due from Banks	\$111,281,163.06
U. S. Government Obligations	110,181,533.56
State, Municipal and Other Public Bonds	21,192,310.24
Other Bonds and Securities	839,461.97
Loans and Discounts	201,865,728.87
Bank Premises	4,022,982.10
Other Real Estate	40.00
Customers' Liability Account of Acceptances	1,056,415.01
Accrued Income and Other Assets	1,889,097.30
<b>Total</b>	<b>\$452,328,732.11</b>
Liabilities	
Deposits	\$413,075,521.96
Acceptances	1,232,127.14
Dividend Payable January 2, 1958	112,000.00
Reserve for Taxes, Accrued Interest and Expenses	4,177,866.70
Other Liabilities	90,001.19
Capital Stock	\$ 2,800,000.00
Surplus	22,200,000.00
Undivided Profits	8,641,215.12
	33,641,215.12
<b>Total</b>	<b>\$452,328,732.11</b>

Depository of the United States Government, State of Louisiana and City of New Orleans. Member of the Federal Deposit Insurance Corporation.

Filed September 6, 1962

## EXHIBIT "V-8"

## WHITNEY NATIONAL BANK OF NEW ORLEANS

Established 1883

## Condensed Statement of Condition, December 31, 1956

Resources		
Cash and Due from Banks		\$116,856,122 41
U. S. Government Obligations		128,625,082 70
State, Municipal and Other Public Bonds		22,160,659 38
Other Bonds and Securities		839,416 65
Loans and Discounts		195,241,760 64
Bank Premises		3,870,212 15
Other Real Estate		128,571 71
Customers' Liability Account of Acceptances		1,324,989 27
Accrued Income and Other Assets		1,604,526 60
Total		\$470,651,341 51
Liabilities		
Deposits		\$434,498,871 03
Acceptances		1,572,644 55
Dividend Payable January 2, 1957		112,000 00
Reserve for Taxes, Accrued Interest and Expenses		3,115,114 82
Other Liabilities		81,266 52
Capital Stock	\$ 2,800,000 00	
Surplus	22,200,000 00	
Undivided Profits	6,241,444 59	
Total		\$470,651,341 51

Depository of the United States Government, State of Louisiana and City of New Orleans. Member of the Federal Deposit Insurance Corporation.

Filed September 6, 1962

EXHIBIT "W"

WHITNEY NATIONAL BANK  
of New Orleans 10

June 28, 1961.

Keehn W. Berry  
*President*

The Honorable Ray M. Gidney,  
Comptroller of the Currency,  
3122 Treasury Building,  
Washington 25, D. C.

Dear Mr. Gidney:

We are now attaching the following:

1. An application to organize the Crescent City National Bank.
2. An application to organize Whitney National Bank in Jefferson Parish.
3. An application for approval to consolidate the Crescent City National Bank with the present Whitney National Bank of New Orleans.

These applications form part of an overall plan for the operation in the Parish of Orleans and in the Parish of Jefferson of the Whitney organization in holding company form.

As we have explained to you, we plan to form the Whitney Holding Corporation and to distribute the stock of this corporation to our shareholders as a dividend, in the proportion of 1/20 of 1 share of the corporation for every outstanding share of Whitney National Bank. The Whitney corporation will then acquire all of the stock of the newly organized Crescent City National Bank, into which the present Whitney National Bank will be consolidated, in accordance with law, by the vote of 2/3rds of the stock holders, pursuant to an agreement under which the present Whitney stockholders will surrender their stock and receive 9 and 19/20 shares of Whitney corporation stock for each share of Whitney Bank stock presently outstanding.

The Whitney corporation will at the same time acquire all of the stock of the newly formed Whitney National Bank in Jefferson Parish.

The details of this program are set out in full in the applications attached and in the exhibits attached thereto.

In accordance with our understanding with you, we are filing an application promptly with the Federal Reserve Board for approval of the Whitney Holding Corporation to become a bank holding company in accordance with law. We understand that approval of the applications attached hereto will be subject to approval of the application with the Federal Reserve Board referred to.

If any further information is desired, please let us know.

Sincerely yours,

K. W. BERRY  
*President.*

KWB-F.

Filed September 6, 1962

EXHIBIT "X-1"

WHITNEY NATIONAL BANK  
of New Orleans 10

June 28, 1961.

Keehn W. Berry  
*President*

The Honorable Ray M. Gidney,  
Comptroller of the Currency,  
3122 Treasury Building,  
Washington 25, D. C.

Dear Mr. Gidney:

Under cover of this letter we are sending you an application to organize a National Bank in Jefferson Parish, Louisiana. As you are undoubtedly aware, industrial sites on the Mississippi River above the City of New Orleans are being developed at a very rapid rate. This area gives promise of becoming one of the nation's most productive manufacturing centers because of its inherent advantages in the form of abundant water, gas, oil, sulphur, and lime and

its favorable location in terms of water and land transportation.

Many of the companies which have undertaken activities on this stretch of the river upstream from us are already our customers, some of them for many years. Since 1947, two state banks and one national bank have been organized in the East Bank portion of Jefferson Parish and one national bank with its home office in Gretna on the West Bank of the Mississippi has located a branch on the East Bank. In effect, these new banks have interposed themselves between our offices in Orleans Parish and our up-river business in the adjoining Parish of Jefferson.

Our proposal, in view of this situation, is to obtain permission to organize a national bank under the name "Whitney National Bank of Jefferson Parish". We are prepared, initially to establish a main office and one branch in the areas of Jefferson Parish indicated on the map enclosed with our application. It is felt that a move of this sort should be marked with decision and for that reason we should like to start with two offices.

As the result of our extensive remodeling of our quarters in New Orleans we have surplus bank furniture and equipment which could be made available to the proposed bank. We envision utilizing rental property which could be attractively designed to meet immediate requirements. Then, as business patterns clarify, we would undertake more substantial arrangements.

Filed September 6, 1962

EXHIBIT "X-2"

WHITNEY NATIONAL BANK  
of New Orleans 10, La.

June 28, 1961.

The Honorable Ray M. Gidney,  
Comptroller of the Currency,  
3122 Treasury Building,  
Washington 25, D. C.

Page #2

In order to give you, as quickly as possible, the sort of supporting information we feel you may want in connection with this application, we are submitting certain data with

your Form 1955. We respectfully ask for your favorable consideration of this application and stand ready to furnish whatever assistance you may require.

Sincerely yours,

K. W. BERRY  
President.

KWB-F.

Filed September 6, 1962

### EXHIBIT "Y"

Application is hereby also made on behalf of such Resulting Bank to the Comptroller of the Currency, pursuant to Section 5155 of the United States Revised Statutes, for permission to establish branches at the following locations now occupied by the head office and branches, or to be occupied by approved branches of

Whitney National Bank of New Orleans:

Popular Name and Location of Proposed Branches	Date Established	Population of City, Town or Village
---	---------------------	--

Following branches of present Whitney National Bank of New Orleans:

Poydras Branch, established 1920		
City Bank Branch, established 1919		
Morgan State Branch, established 1911		
French Market Branch, established 1919		
St. Charles Avenue Branch—formerly Margaret Place Branch, established 1924		
Carrollton Branch, established 1908		
Broad Street Branch, established 1927		
Gentilly Branch, established 1958		
St. Roch Branch, established 1927		
Third District Branch, established 1913, and Algiers Branch, established 1930		

There are also attached, and made a part of this application, a copy of the agreement between the participating banks relating to the proposal which provides the basis of this application and supplementary documents, statements, schedules, and exhibits relative to the factors which the Comptroller of the Currency and other Federal agencies are required to consider under the provisions of applicable statutes.

Summarize the basic reasons and the negotiations which led to the filing of this application and explain fully the extent of common ownership or management of the

The Whitney National Bank of New Orleans is limited in its establishment of branches to the Parish of Orleans, the boundaries of which conform to those of the City of New Orleans. The city has grown and spread over the city boundaries into Jefferson Parish and to a lesser degree St. Bernard Parish. Old customers of Whitney National Bank have established new plants and places of business beyond the city limits and likewise individual accounts are influenced by the fact that the customer has moved beyond the city limits. Whitney National Bank therefore proposes to set up a holding company—subject to the approval of the proper authorities, and in order that there be no conflicts of interest between the city units and the Jefferson Parish units it proposes by this

consolidation to place 100% of Whitney National Bank of New Orleans stock and 100% of Whitney National Bank of Jefferson Parish into that holding company. Further details of plans of procedure appear on the following page.

K. W. Berry, President, Whitney National Bank of New Orleans  
(Name) (Title)

529-7272 (New Orleans)  
(Telephone No.)

It is understood that the cost of any necessary examination or investigation in relation to this application will be borne by:

Whitney National Bank of New Orleans  
(Name of Bank)

#### Applicants

The applicants hereby represent that the information contained in this application is true and complete to the best of their knowledge and belief.

Whitney National Bank of New Orleans By (Authorized Officer)  
(Name of Bank)

Crescent City National Bank By (Authorized Officer)  
(Name of Bank)

Filed September 7, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

#### STIPULATION

It is hereby stipulated by and between the parties hereto that:

(1) The motion to dismiss filed herein on August 10, 1962, and the motion for summary judgment filed herein on July 11, 1962, by defendant James J. Saxon, Comptroller of the Currency, and the motion for summary judgment filed herein on August 13, 1962, by intervening defendant Whitney National Bank in Jefferson Parish, shall be treated in all respects as motions to dismiss and for summary judgment, respectively, against intervening plaintiff J. W. Jeansonne, Louisiana State Bank



Commissioner, as well as against the other plaintiffs in this action.

(2) Intervening plaintiff J. W. Jeansonne, Louisiana State Bank Commissioner, shall, if he so elects be deemed in all respects to have joined in the cross-motion for summary judgment filed herein by other plaintiffs on July 24, 1962, in all points and authorities filed in support of such motion, and in all points and authorities filed in opposition to pending motions filed by defendants.

(3) The issue of the alleged violation of Louisiana Act 275 of 1962 is to be treated in all respects as raised in the pleadings herein.

*Attorney for Plaintiffs.*

*Attorney for Defendant,*  
James J. Saxon,  
Comptroller of the Currency.

*Attorney for Intervening Defendant,*  
Whitney National Bank in  
Jefferson Parish.

September 7, 1962.

Filed September 7, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

ORDER ALLOWING STATE BANK COMMISSIONER TO INTERVENE  
AS A PLAINTIFF

A motion having been filed by J. W. Jeansonne, State Bank Commissioner of the State of Louisiana, for leave to intervene as a plaintiff in this action, and all parties having consented to the granting of this motion, it is hereby

Ordered that the said J. W. JEANSONNE, State Bank Commissioner of the State of Louisiana, have leave to intervene in this cause and that he be and hereby is made an additional party plaintiff herein, and it is

Further Ordered that the Complaint of such intervening plaintiff, presently attached as an exhibit to the motion for intervention, may be filed in the Clerk's office in the same manner and with the same effect as if such intervening plaintiff had been named as an original party to this cause, and it is

Further Ordered that the caption of this action shall hereafter read as follows:

BANK OF NEW ORLEANS AND TRUST COMPANY, GUARANTY BANK  
AND TRUST COMPANY, *Plaintiffs.*

BANK OF LOUISIANA IN NEW ORLEANS, J. W. JEANSONNE,  
State Bank Commissioner of the State of Louisiana,  
*Intervening Plaintiffs,*

*v.*

JAMES J. SAXON, Comptroller of the Currency, *Defendant.*

WHITNEY NATIONAL BANK IN JEFFERSON PARISH, *Intervening  
Defendant.*

Done this — day of September, 1962.

*United States District Judge.*

We consent:

EDWARD L. MERRIGAN,  
*Attorney for Plaintiffs.*

DAVID V. SEAMAN,  
*Attorney Department of Justice  
Attorney for Defendant  
Comptroller of the Currency.*

W. GRAHAM CLAYTOR, JR.,  
*Attorney for Intervening  
Defendant Whitney National  
Bank in Jefferson Parish.*

Filed September 7, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

ORDER ALLOWING INTERVENING DEFENDANT WHITNEY NATIONAL BANK IN JEFFERSON PARISH TO SERVE AND FILE AN AMENDED ANSWER.

Intervening Defendant Whitney National Bank in Jefferson Parish having moved the Court for leave to serve and file an amended answer herein in accordance with the provisions of Rule 15(d) of the Federal Rules of Civil Procedure, it is hereby

Ordered, That the Intervening Defendant Whitney National Bank in Jefferson Parish have leave to serve and file such amended answer.

Done this      day of September, 1962

*United States District Judge.*

No Objection:

*Attorney for Plaintiffs.*

*Attorney for Defendant.*  
James J. Saxon,  
Comptroller of the Currency.

Filed September 14, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted].

SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF INTERVENING  
DEFENDANT

STATE OF LOUISIANA,  
Parish of Orleans.

Before me, the undersigned authority, personally came and appeared JAMES GILLY, JR., who, being by me duly sworn, deposes and says:

1. I am a resident of the City of New Orleans and President of the Whitney National Bank in Jefferson Parish. This Affidavit is made to supplement the Affidavit made in these proceedings on June 16, 1962, as supplemented on August 3, 1962.

2. When Whitney National Bank in Jefferson Parish (hereinafter called "Whitney-Jefferson") is in operation, it will have no officer or employee common with Whitney National Bank in New Orleans (hereinafter called "Whitney-New Orleans"), other than a shareholder who would be the only common officer. As disclosed in affidavit of James Gilly, Jr. dated June 16, 1962, there are four common directors.

3. Whitney-Jefferson and Whitney-New Orleans are entirely separate corporate entities, each with its own certificate of organization and approval of the Comptroller of the Currency. Whitney-Jefferson has been recognized by both the Comptroller of the Currency and the Board of Governors of the Federal Reserve System as a newly organized independent bank. Whitney-Jefferson will operate a banking house entirely separate from that of the Whitney-New Orleans.

4. Whitney-Jefferson has subscribed to three hundred sixty (360) shares of par value of the capital stock of the Federal Reserve Bank of Atlanta and paid for such stock in accordance with the provisions of Section 2 of the Fed-

eral Reserve Act (12 U.S.C. Section 282). Its legal reserve will be carried in that institution and it will establish correspondent banking relations with the Whitney-New Orleans and with such other banks as may prove convenient and desirable in the operations of its business.

5. The Capital and surplus of Whitney-Jefferson is \$600,000.00 and the capital and surplus of Whitney-New Orleans is \$30,000,000.00 and because of the loan limit which in most cases is 10% of its capital and surplus, Whitney-Jefferson may in its discretion offer participations in loans to Whitney-New Orleans and other banks. Whitney-New Orleans in the course of its regular business participates in loans made by other banks.

6. Of the seven banks domiciled in Jefferson Parish, only one is a member of the New Orleans Clearing House Association, and that institution is an associate member. The banks in that Parish, however, avail themselves of the clearing privileges through the services of a correspondent, one of the four New Orleans banks who make up the Clearing House Association, and the Whitney-Jefferson proposes to clear through the Whitney-New Orleans.

7. Whitney-Jefferson will have its own vault and will act in accordance with established banking practices as to any cash which it considers to be excess. Whitney-Jefferson will not have as of the time of its opening a night depository, and should the use of a night depository be deemed desirable, Whitney-Jefferson would provide itself with such facilities as might be available, including the installation of a night depository in its own banking house or the rental of other facilities.

8. Whitney-Jefferson has and will maintain its own books of account and its own stationery, checks and forms, none of which mention Whitney-New Orleans.

9. No customer of Whitney-Jefferson will have a contractual right to make deposits at Whitney-New Orleans to be credited to his account at Whitney-Jefferson. It is, however, normal banking practice in instances where deemed desirable, for an independent bank to take a deposit from one of its customers and remit it to another bank designated by the customer for the customer's account. Whitney-Jefferson will expect to pursue normal banking practices in this regard.

10. No customer of Whitney-Jefferson will have a contractual right to withdraw funds at Whitney-New Orleans

to be charged to his account at Whitney-Jefferson. It is normal banking practice for an independent bank to cash checks drawn on other banks in instances where it feels that such action may improve the cashing bank's status in the community or may gain favor with the person cashing the check.

11. The initial meeting of shareholders of Whitney-Jefferson was held on May 10, 1962 and the Directors named in Exhibit 4 attached to the affidavit of James Gilly, Jr., dated August 3, 1962 were elected at that meeting.

12. The articles of association and certificate of organization of Whitney-Jefferson were adopted and executed on May 10, 1962 and transmitted on that date to the Comptroller of Currency. The corporate existence of Whitney-Jefferson was confirmed by letter from William B. Camp, Deputy Comptroller of Currency, dated May 11, 1962, a copy of which is annexed hereto as Whitney Exhibit 6.

13. On May 24, 1962, the aforesaid Directors paid the price for their qualifying shares and were sworn, qualified and took office. Likewise, on May 24, 1962 the Directors adopted by-laws and elected officers.

14. On June 15, 1962, Whitney-Jefferson subscribed for three hundred sixty (360) shares of \$100.00 par value stock of the Federal Reserve Bank of Atlanta, Georgia, and paid the necessary portion of the subscription price as required by the Federal Reserve Act, namely \$18,000.00.

15. As shown by Whitney Exhibit 5 attached to affidavit of E. A. Waffenschmidt dated August 3, 1962, out of a total 105,298 shares voting, 12,024 shares of Whitney National Bank of New Orleans stock were voted against the consolidation agreement between that Bank and Crescent City National Bank. The consolidation was effected on May 24, 1962 and at this point Whitney Holding Corporation was the owner of all of the shares (except directors' qualifying shares) of Whitney National Bank of New Orleans (as consolidated), subject to the rights of those who had voted against the consolidation to perfect their dissents pursuant to the terms of 12 U.S.C. Section 215(b). No shareholder requested receipt of the value of his shares within thirty days after the consolidation pursuant to 12 U.S.C. Section 215(b).

16. During the period June 4-June 8, 1962, Whitney-Jefferson commenced negotiations for a temporary site for its

banking operations with the owner of the premises 4407 Jefferson Highway. On June 13, 1962, Whitney-Jefferson instructed and authorized the real estate agent negotiating the lease on behalf of Whitney-Jefferson to enter into a formal lease agreement on its behalf, which lease was executed and effective June 15, 1962. There was no self-service "Washateria" or any activity of that nature, in operation at 4407 Jefferson Highway on July 3, 1962, and there had been none since prior to the time of commencement of the negotiations aforesaid. Affiant knows of no obstacle which would have prevented the completion of a lease agreement prior to June 15, 1962. Whitney-Jefferson at any time on or subsequent to June 9, 1962 was in a position to commence banking operations in available premises within twenty-four hours after the issuance of a certificate of authority to commence business by the Comptroller of Currency. All equipment, furniture and supplies necessary to open the bank were on hand. Since time of commencement of negotiations for the lease as aforesaid, there was no furniture or equipment in the premises 4407 Jefferson Highway and no indication of prior use as a self-service "Washateria" other than readily removable exterior signs on the premises.

17. Whitney-Jefferson finally acquired its proposed permanent site, 4408 Jefferson Highway, on June 29, 1962. The "Royal Tourist Court" has not been in operation since that time.

s. JAMES GILLY, JR.

Sworn to and Subscribed before me this 8 day of September, 1962.

BARTHOLOMEW P. SULLIVAN, JR.,  
Notary Public.



September 14, 1962

INTERVENING WHITNEY EXHIBIT 6

TREASURY DEPARTMENT  
Comptroller of the Currency  
Washington 25, D.C.

May 11, 1962.

Mr. Malcolm L. Monroe  
Monroe & Lemann  
Attorneys and Counsellors at Law  
Whitney Building  
New Orleans 12, Louisiana

Re: "Whitney National Bank in Jefferson Parish",  
Louisiana, organizing

Dear Mr. Monroe:

We have your letter of May 10, enclosing the following organization papers of the subject bank:

- Articles of Association
- Organization Certificate
- Waiver of Notice of Meeting of Shareholders
- Minutes of Meeting of Shareholders
- General Form or Bylaws
- Official Signatures of Officers
- List of Directors

These documents, with the exception of the Bylaws and Official Signatures of Officers have been placed on file.

The Official Signatures of Officers should be re-executed (additional form enclosed) after the Directors become qualified to elect them and the date of their election should be inserted thereon. As you know, the elected Directors in order to qualify must own in their own right shares of the capital stock of the association the aggregate par value of which is not less than \$1,000. When this has been accomplished we should be furnished with an affidavit from the Attorney for the bank stating that the Directors paid for the qualifying shares of stock in their own names.

The Bylaws are being returned for execution after the Directors have qualified as set forth above.

Since the corporate existence of the national bank has

now been established with the filing of the Articles of Association and Organization Certificate, in acceptable form, contracts may be entered into and disbursements for the purchase of equipment, supplies, etc., from the capital funds of the bank may properly be made. It is important, of course, that complete data and supporting documents be maintained for subsequent use in recording the disbursements made from the capital funds on the new bank's general ledger.

Before charter can be issued, it will be necessary for the following to have been received in this office, in proper form:

(1) Affidavit from the Attorney for the bank stating that the Directors own in their own right shares of the capital stock of the association the aggregate par value of which is not less than \$1,000.

(2) Executed General Form of Bylaws.

(3) Re-executed Signatures of Officers.

(4) Certificate of Payment of Capital Stock.

(5) Notification from the Federal Reserve Bank of Atlanta, Georgia, that the required payment has been made on the subscription to Federal Reserve Stock.

(6) About ten days in advance of the anticipated date for the opening for business, this office should be furnished with an itemized list of disbursements made from the capital funds of the bank, also a detailed list of all of the organization expenses of every type which the bank is committed for, but which are not paid or for which checks have been issued and are outstanding. Certified copies of the minutes of the meetings or meetings of the Board of Directors at which the expenses incurred (other than those previously approved by the shareholders) were approved by the Board should be submitted with the list. If the expenses include any Attorney's fee a copy of the Attorney's bill submitted to the organizers showing the nature of the services rendered, the hours devoted to the task and the separate charges made therefor, should accompany the minutes. As of the same date, an officer of the depository bank should certify to us the amount remaining in the account of the organizing bank. If any disbursements listed are represented by checks that have not cleared at that time, those items should be prop-

erly identified in order to enable reconciliation of the funds on hand with the total capital funds collected.

Upon receipt of advice that the above requirements have been met and a definite date for the opening of the bank has been determined, the case will have further attention.

Very truly yours,

s/ WILLIAM B. CAMP,  
*Deputy Comptroller of the Currency*

Enclosures

Filed September 18, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

[Title omitted]

Civil Action No. 1857-62

ANSWER OF INTERVENING DEFENDANT TO COMPLAINT OF INTERVENING PLAINTIFF, J. W. JEANSONNE, STATE BANK COMMISSIONER OF THE STATE OF LOUISIANA.

Whitney National Bank in Jefferson Parish, the intervening defendant, answers the complaint of intervening plaintiff, J. W. Jeansonne, State Bank Commissioner of the State of Louisiana, as follows:

#### First Defense

The complaint fails to state a claim upon which relief can be granted.

#### Second Defense

1

It is admitted that intervening plaintiff, State Bank Commissioner of the State of Louisiana (hereinafter called the Commissioner), under the terms of the statutes described in Paragraph 1 is charged with certain administrative duties as described therein. The allegations contained in paragraph 1 are otherwise denied, and intervening defendant specially avers that such powers as may be vested in the Commis-

sioner by virtue of said statutes are restricted to banks organized under the laws of the State of Louisiana.

## 2

It is admitted that the Commissioner is suing on his own behalf as the State Bank Commissioner of the State of Louisiana. The allegations contained in Paragraph 2 are otherwise denied.

## 3

The allegations of the first sentence of Paragraph 3 are admitted. Intervening defendant denies the allegations of the second sentence of Paragraph 3 except to admit that Whitney Holding Corporation, a corporation duly organized under the laws of the State of Louisiana and duly recognized as a bank holding company pursuant to the applicable Federal statutes, owns all of the outstanding stock of Whitney National Bank of New Orleans, except directors' qualifying shares.

## 4

The allegations contained in Paragraph 4 are denied, except to admit the existence of 28 U.S.C. § 1331. Intervening defendant specially avers that insofar as the subject matter of the complaint of the Commissioner involves the Comptroller of the Currency, it is strictly within an area committed to the sole and uncontrolled discretion of said Comptroller and is not subject to judicial review.

## 5

The allegations of the first sentence of Paragraph 5 are admitted. The allegations of the second sentence deal in relative terms and if called upon to admit or deny the said allegations, intervening defendant denies same for lack of sufficient information to justify a belief. Intervening defendant admits that as of June 30, 1961 it held approximately 39% of the total deposits of all banks in the Parish of Orleans, State of Louisiana, and 44% of all deposits of individuals, partnerships and corporations, but the remaining allegations of the third sentence of the first paragraph of Paragraph 5 are in relative terms, and if called upon to admit or deny said allegations, intervening defendant de-

nies same for lack of sufficient information to justify a belief.

The allegations of the second paragraph of Paragraph 5 are denied for lack of sufficient information to justify a belief.

## 6

The allegations contained in Paragraph 6 are denied, except to admit the existence of 12 U.S.C. § 36, and intervening defendant specially avers that said § 36 has no application to the subject matter of the complaint of the Commissioner.

## 7

Intervening defendant admits the existence of Louisiana Revised Statutes 6:54, which is applicable only to banks organized under the laws of the State of Louisiana. Intervening defendant otherwise denies the allegations of Paragraph 7 and avers that said statutory provision has no application whatsoever to the subject matter of the complaint of the Commissioner.

## 8

The allegations contained in Paragraph 8 are denied except to admit the existence of the banks named in said paragraph. Intervening defendant specially avers that one of said banks, namely Merchants Trust and Savings Bank, originally was a plaintiff in this litigation, and later was permitted to withdraw as a plaintiff at its own request.

## 9

The allegations of Paragraph 9 are denied, except to admit the existence of the banks named therein and to admit that there is competition among the banks located in Orleans Parish (City of New Orleans) Louisiana. National Bank of Commerce in New Orleans, the second largest bank in the Parish of Orleans, has established in Jefferson Parish an affiliate under the name National Bank of Commerce in Jefferson Parish, which affiliate has been operating in Jefferson Parish since 1955. This banking operation now has a main office and four branches in Jefferson Parish. Likewise, one of the major stockholders and directors of National American Bank in New Orleans, the fourth largest bank in the Parish of Orleans, is a director of and holds forty per

cent (40%) of the stock of Merchants Trust and Savings Bank a state-chartered banking operation in Jefferson Parish which was originally a plaintiff in this litigation and subsequently was permitted to withdraw. The Commissioner has never made and is not now making any attempt to prevent these two operations in Jefferson Parish.

## 10

The allegations contained in Paragraph 10 are denied.

## 11

Intervening defendant denies the allegations of Paragraph 11 except to admit that Whitney National Bank of New Orleans, Crescent City National Bank, and Whitney Holding Corporation participated in a reorganization program, all of the phases of which received the required approvals of the appropriate regulatory authorities. In addition, intervening defendant avers that Crescent City National Bank was properly organized and received due approval of, and a certificate of authority to commence business from, the Comptroller of the Currency, which action on the part of the Comptroller of the Currency was in an area committed to his sole discretion and is not subject to judicial review. Intervening defendant avers also that the matters alleged in Paragraph 11 have no bearing whatsoever on the subject matter of the complaint of the Commissioner.

## 12

The allegations of Paragraph 12 are denied.

## 13

The allegations of Paragraph 13 are denied, except to admit that all due approvals were obtained with respect to the steps actually taken, and that defendant Comptroller has filed an affidavit in this proceeding under date of August 9, 1962, which contains the paragraphs quoted:

## 14

The allegations of paragraph 14 are denied, except to admit that intervening defendant has filed a supplemental

answer by leave of this Honorable Court which contains the paragraphs quoted.

15

The allegations of Paragraph 15 are denied.

16

The allegations of Paragraph 16 are denied.

17

The allegations of Paragraph 17 are denied, except to admit that there are certain restrictions on the establishment by state banks located in Jefferson Parish of branches in other parishes:

18

The allegations of the first two sentences of Paragraph 18 are in relative terms and if called upon to admit or deny same, intervening defendant denies the allegations thereof. Intervening defendant denies the allegations of the third sentence of Paragraph 18 except to admit that Louisiana law contains certain restrictions on the establishment by state banks located in Orleans Parish of branches in other parishes. The allegations of the fourth sentence of Paragraph 18 are denied.

19

The allegations of Paragraph 19 are denied, and intervening defendant avers that "further expansion of Whitney Holding Corporation" would be regulated by such officers, boards and bodies as would be proper under statutes and regulations to the extent validly applicable, including the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841-48.

20

The allegations of Paragraph 20 are denied.

### Third Defense

1

All action taken by Whitney National Bank of New Orleans, Crescent City National Bank, Whitney Holding Corporation and intervening defendant in connection with the



subject matter of the complaint of the Commissioner has been taken openly and with full disclosure of all relevant facts and without subterfuge of any kind.

## 2

The organization of the intervening defendant in no way circumvents, and its commencement of the business of banking in Jefferson Parish, Louisiana, would in no way circumvent, the provisions and purposes of the National Banking Act, but are entirely consistent therewith and authorized thereby. The purpose of the organization of the intervening defendant was to furnish Jefferson Parish the additional local banking facilities urgently needed and sought by those residing and doing business in said Parish, as well as to give Whitney Holding Corporation and its stockholders an opportunity to share in the potential growth offered to banks serving said Parish.

## 3

The banking facilities to be established by intervening defendant will not in any way or for any purpose constitute a "branch" or "branch facility" of either Whitney National Bank of New Orleans or Whitney Holding Corporation, but intervening defendant is a legal entity separate and distinct from Whitney National Bank of New Orleans and Whitney Holding Corporation.

## 4

The issuance to intervening defendant by defendant, the Comptroller of the Currency, of a certificate of authority to commence the business of banking will be in accordance with the applicable provisions of the National Bank Act (12 U.S.C. §§ 21-27) and will be within the authority and discretion vested thereby in said defendant.

#### Fourth Defense

## 1

The Commissioner attempts to rely upon Act 275 of the Louisiana Legislature of 1962. Said Act was first introduced into the Louisiana House of Representatives as House Bill 1221 on June 3, 1962, just six days prior to the filing

of this suit by the Bank of New Orleans and Trust Company et al. House Bill 1221 was certified by the Governor as emergency legislation on July 4, 1962. Under Louisiana law, House Bill 1221 became immediately effective as law when it was signed by the Governor as Act No. 275 on July 10, 1962, at 4:45 p.m.

## 2

As first introduced in the House of Representatives, House Bill 1221 would not have prevented Whitney National Bank in Jefferson Parish from opening for business as the stock of said bank was already owned by Whitney Holding Corporation. Subsequent to the granting of a temporary restraining order by this Court on June 27, 1962, which prevented the Comptroller of the Currency from issuing a certificate to commence business to Whitney National Bank in Jefferson Parish, House Bill 1221 was amended by the insertion therein of the present Sub-section 5 of Section 3 of Act 275 (hereinafter referred to as Section 3(5)), which specifically provides as follows:

“Section 3. Prohibitions upon Acquisition of Bank Shares or Assets.

“It shall be unlawful . . . (5) for any bank holding company or subsidiary thereof to open for business any bank not now opened for business, whether or not, a charter, permit, license or certificate to open for business has already been issued.” (Underscoring added.)

## 3

The temporary restraining order issued herein on June 27, 1962, and the preliminary injunction granted by this Court on July 6, 1962, dated July 10, 1962 both of which enjoined the Comptroller of the Currency from issuing a certificate to commence business, were the sole reason that Whitney National Bank in Jefferson Parish did not open its doors for business several weeks prior to July 10, 1962, the effective date of Act No. 275.

## 4

Because Louisiana Act 275 became effective on July 10, 1962, the *status quo* has been altered since June 27, 1962, the date on which the temporary restraining order was issued.

The Commissioner relies upon Section 3(5) of Act 275, as a ground for judgment in his favor. Consequently, it is necessary that the applicability and constitutionality of Section 3(5) of Act 275 be passed upon if intervening defendant is to be restored to the former position in which it would be had the temporary restraining order not been issued.

## 5

Intervening defendant specially avers that Act 275 furnishes no basis for granting the Commissioner's request for declaratory relief or for an injunction, either temporary or permanent, against either defendant Comptroller of the Currency or intervening defendant, because Section 3(5) of Act 275 does not apply to the Comptroller of the Currency or to a national bank such as Whitney National Bank in Jefferson Parish.

## 6

Intervening defendant further avers that Section 3(5) of Act 275, if applicable, violates the statutes and Constitution of the United States in the following respects:

(a) Section 3(5), as attempted to be applied here by the Commissioner, is invalid under the supremacy clause of the United States Constitution (Article VI, Clause 2) in at least two respects:

- (1) It would prevent the Comptroller from issuing, in his sole discretion, to a properly and legally organized and chartered national bank, a certificate of authority to commence the business of banking, and is therefore in direct conflict with 12 U.S.C. §§ 26 and 27.
- (2) It would prevent the opening of a national bank as properly chartered and organized under federal law, and in this respect is likewise in direct conflict with 12 U.S.C. §§ 26 and 27.

(b) Section 3(5) of Act 275, as attempted to be applied here by the Commissioner, violates the Fourteenth Amendment to the United States Constitution in two respects:

- (1) Section 3(5), if applied to Whitney National Bank in Jefferson Parish, constitutes an arbitrary, capricious and unreasonable classification that denies

equal protection of law to the intervening defendant.

- (2) Whitney National Bank in Jefferson Parish had completed all steps required by law and was ready to commence business several weeks prior to the effective date of Act 275. Intervening defendant, therefore, had a vested property right which Section 3(5) of Act 275 denies intervening defendant without due process of law.

(c) Section 3(5) of Act 275, as attempted to be applied here by the Commissioner, violates Article I, Section 10 of the United States Constitution in that it impairs the obligation of a contract between the federal government and the intervening defendant.

WHEREFORE, intervening defendant prays that:

(1) The Court enter a judgment declaring and adjudging that defendant, Comptroller of the Currency, is authorized and empowered by the provisions of the National Bank Act (12 U.S.C. §§ 21-27) in his sole discretion to issue to intervening defendant a certificate of authority to commence the business of banking in Jefferson Parish, Louisiana.

(2) The Court deny the prayer of the complaint of intervening plaintiff, J. W. Jeansonne, State Bank Commissioner of the State of Louisiana, for a permanent injunction against defendant.

(3) The Court enter a judgment herein declaring that Section 3(5) of Louisiana Act 275 of 1962 does not apply either to defendant, Comptroller of the Currency, or to intervening defendant, Whitney National Bank in Jefferson Parish, or alternatively, that there be a judgment declaring that the said Section 3(5) of Act 275 is unconstitutional and void.

Intervening defendant further prays for all legal, equitable and declaratory relief.

/s/ BRICE M. CLAGETT,  
Attorney for Intervening Defendant  
Whitney National Bank in  
Jefferson Parish

Filed September 25, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

MOTION OF THE NATIONAL ASSOCIATION OF SUPERVISORS OF  
STATE BANKS FOR LEAVE TO APPEAR AS AMICUS CURIAE.

The National Association of Supervisors of State Banks respectfully moves this Court for an order permitting it to appear as an *Amicus Curiae* in the above-captioned proceeding for the limited purpose set forth below. In support of this motion, the Movant respectfully states as follows:

1. The Plaintiff and Intervening Plaintiffs consent to this Motion. The Defendant and Intervening Plaintiff do not object to Movant's appearance as an *Amicus Curiae* for the limited purposes set forth herein.

2. The National Association of Supervisors of State Banks was founded in 1902 and has 52 Members. It is composed of the officials of State governments responsible for the supervision of State-chartered banking institutions in every State in the Union, and of such officials in the Commonwealth of Puerto Rico and in the Virgin Islands. As of December 31, 1961, State-chartered banking institutions under their jurisdiction numbered 9,446 with total resources in excess of 150 billion dollars.

3. The facts of this case, and the relevant statutes, have been ably set out in the pleadings already filed with this Court and will not be repeated here.

4. The two questions of law raised by the various motions for summary judgment which have been filed, and upon which Movant would like to be heard, are as follows:

- (a) whether Louisiana Act 275 of 1962 relating to bank holding companies acts as a bar to the issuance of a certificate of authority by the Defendant, Comptroller of the Currency, to the Intervening Defendant, Whitney National Bank in Jefferson Parish, and, if so, whether said act is constitutional; and

- (b) whether the issuance of a certificate of authority by the Defendant, Comptroller of the Currency, to the Intervening Defendant, Whitney National Bank in Jefferson Parish, would constitute an unlawful evasion of the provisions of Section 36(c) of the National Bank Act, 12 U.S.C. 36(c).

5. Movant herewith requests permission to file a Memorandum, as *Amicus Curiae*, on the foregoing two questions. Said Memorandum will be filed on September 25, 1962, which is the date established by an order of Judge Walsh for any further pleadings or memoranda in this case.

6. Movant's interest in the first question set forth above is as follows: There are presently a number of States which prohibit or restrict bank holding companies, or any expansion thereof. Many of these statutes specifically encompass National banks. Accordingly, any holding of this Court that Louisiana Act 275 of 1962 does not bar the expansion of a banking holding company organized under Louisiana statutes to include a National bank in its system, or that the Law is unconstitutional if such is its intention, may affect the validity of other State statutes seeking to prohibit or restrict the expansion of bank holding companies.

7. Movant's interest in the second question is as follows: As this Court has noted, in the National Bank Act "Congress has adopted state law on the establishment of branches by state banks as the measuring stick for the establishment of branches by national banks. 12 U.S.C. 36(c)." *Commercial State Bank of Roseville v. Gidney*, 174 F. Supp. 770, 774 (1959), aff'd. 278 F. 2d 871 (D.C. Cir. 1960). The law of the State of Louisiana does not authorize State banks (with capital in excess of \$100,000) to establish branches in any Parish beyond the Parish in which its main office is located, if another bank is already located and operating in the Parish into which the large bank would like to expand. (L.R.S. 6:54) Accordingly, under the facts of this case, the Whitney National Bank of New Orleans could not establish a branch in neighboring Jefferson Parish where there are presently other banks in operation. In Movant's opinion, the transaction here involved constitutes an unlawful evasion of the branch banking laws of the National Bank Act inasmuch as it unlawfully evades the branch banking laws of the State of Louisiana. A decision on this matter would also constitute a precedent in the thirty-two States



with statutes either prohibiting or limiting branch banking because the Defendant Comptroller may only be sued in the District of Columbia without his consent.

8. Movant's Members seek appearance before this Court, not in an official capacity of speaking for their respective State governments, but as a group of experts on these important legal issues in which they have a common interest and which have a national impact. They believe that their opinion as to the law on the questions will be of assistance to the Court.

9. Under similar circumstances Movant has previously been granted authority by this Court, and by the Court of Appeals for the District of Columbia, to appear as an *Amicus Curiae*: *Camden Trust Company v. Gidney*, (District Court, Civil Action No. 2-61) aff'd, 301 F. 2d 521 (1962), cert. denied 369 U.S. 886 (1962); *Old Kent Bank & Trust Co. v. Martin*, 172 F. Supp. 951 (1959); aff'd, 281 F. 2d 61 (1960).

WHEREFORE, the National Association of Supervisors of State Banks respectfully moves this Court for an order permitting it to appear as an *Amicus Curiae* in the above-captioned proceeding for the limited purpose set forth above.

Respectfully submitted

/s/ James F. Bell

1001 Connecticut Avenue, N. W.  
Washington 6, D. C.

*Attorney for Movant.*

September 25, 1962

Consents:

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*Defendant,*  
*Comptroller of the Currency.*

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*Intervening Defendant,*  
*Whitney National Bank*  
*in Jefferson Parish.*

---

*Plaintiffs,*  
*Bank of New Orleans and Trust*  
*Company,*  
*Guaranty Bank & Trust Company.*



*Intervening Plaintiff,  
Bank of Louisiana in New Orleans.*

*Intervening Plaintiff,  
J. W. Jeansonne,  
Louisiana State Bank Commissioner.*

APPENDICES TO MEMORANDUM OF AMICUS CURIAE  
NATIONAL ASSOCIATION OF SUPERVISORS OF STATE BANKS,  
FILED SEPTEMBER 25, 1962

APPENDIX A

Summary of State Laws Affecting Bank Holding Companies (1962)  
States Restricting or Prohibiting Bank Holding Companies

State:

Georgia

Code of Georgia Anno., Section 13-201.1, 13-207, enacted February 9, 1960.<sup>1</sup>

Illinois

Smith-Hurd Ill. Anno. Stat., Ch. 16-1/2, Sections 71 through 76, enacted July 5, 1957.<sup>2</sup>

Indiana

Burns Ind. Stat. Anno., Sections 18-1814 through 18-1817, enacted March 12, 1957.<sup>3</sup>

Kansas

Gen. Stat. of Kansas Anno., Sections 9-504 through 9-507, enacted June 29, 1957.<sup>4</sup>

Kentucky

Ky. Revised Stat., Section 287.030, enacted in 1938.<sup>4</sup>

Louisiana

La. Revised Stat., Title 6, Ch. 12, Sections 1001 through 1006, enacted July 10, 1962.<sup>5</sup>

Michigan

Michigan Stat. Anno., Section 21.10, enacted October 17, 1933. (See *Peoples Savings Bank v. Stoddard*, 359 Mich. 297, 102 N.W. 2d 777, 792 (Supreme Court, 1960) (dictum) for applicability to National banks).

*State*

## Mississippi

Miss. Code, Section 5235, enacted April 2, 1934.

## New Jersey

N. J. Stat. Anno., Sections 17:9A-344 through 17:9A-354, enacted June 5, 1957.<sup>1</sup>

## Pennsylvania

Purdon's Pa. Stat. Anno., Title 7, Sections 851 through 855, enacted July 11, 1957.<sup>2</sup>

## South Carolina

Code of Laws of S.C., Section 12-77, enacted March 13, 1940.<sup>3</sup>

## Vermont

Vermont Stat. Anno., Title 11, Section 131, enacted April 1, 1915.

## Washington

Revised Code of Wash., Section 30.04.230, enacted February 27, 1933.<sup>4</sup>

## West Virginia

W. Va. Code Anno., Section 3220, enacted February 28, 1959 (effective in 90 days).

## States Permitting Bank Holding Companies with State Approval

*State*

## Florida

Fla. Stat. Anno., Section 659.14, enacted May 20, 1953.

## Massachusetts

Mass. Gen. Laws Anno., Ch. 167A, Sections 1 through 7, enacted September 21, 1957.

## New York

Book 4, Banking Law, Art. III-A, Sections 141-147, first enacted January 29, 1957.

Note: The statutes of Florida and Washington are specifically limited in their application to State Banks. The remaining statutes either provide expressly that they are applicable to National banks as well as State banks, or they apply generally to all "banks", "banking corporations", "banking institutions", or in the case of the Vermont statute, only to "corporations."

<sup>1</sup> Company cannot acquire more than 5% of the stock of two or more banks.

<sup>2</sup> Company cannot acquire more than 15% of the stock of two or more banks.

<sup>3</sup> Company cannot acquire more than 25% of the stock of two or more banks.

<sup>4</sup> Company cannot acquire more than 50% of the stock of a bank.

<sup>5</sup> Company cannot acquire more than 25% of the stock of a bank.

<sup>6</sup> Company owning more than 25% of the stock of a bank cannot acquire more than 10% of the stock of another bank.

<sup>7</sup> Company cannot acquire more than 49% of the stock of a bank.

\* The date of enactment is in each case the date that the statute presently effective became effective in its original form.

## APPENDIX B

Summary of State Laws Restricting or Prohibiting Bank Holding Companies  
Prior to the Passage of the Bank Holding Company Act of 1956<sup>1</sup>

## State

## Georgia

Ga. Laws 1956, Vol. 1, pp. 309-312, enacted February 27, 1956. See Appendix C.<sup>2</sup>

## Illinois

Ill. Laws 1955, 69th Gen. Assembly, at pp. 1372 and 1373, enacted July 11, 1955. Company cannot acquire more than 15% of the stock of two or more banks.<sup>3</sup>

## Kentucky

See Appendix A.

## Michigan

See Appendix A. Corporation may not hold bank stock unless it was acquired as part of a plan of reorganization.

## Mississippi

See Appendix A. Prohibits bank holding companies.

## South Carolina

See Appendix A.

## Vermont

See Appendix A.

## Washington

See Appendix A.

## West Virginia

See Appendix A. Prohibits bank holding companies.

Note: The Washington statute is specifically limited in its application to State banks.

<sup>1</sup> May 9, 1956.

<sup>2</sup> These sections, quoted in Appendix C, were repealed on February 9, 1960, when the presently effective Section 13-207 was enacted.

<sup>3</sup> Repealed on July 5, 1957, when the presently effective Sections 71-76 were enacted.

## APPENDIX C

## GEORGIA BANK HOLDING COMPANY ACT OF 1956

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA  
AS FOLLOWS:

Section 1. The maintenance of competitive services between banks has been found to be the best method of serving the public. There are dangers in the concentration of economic power through centralized control of banks. It is, therefore, held to be in the public interest to curtail such concentration of economic power by preventing the expansion of bank holding companies and similar organizations.

Sec. 2. Unless the context requires otherwise: (a) 'Bank' means any national bank or State bank, banking association, savings bank or trust company, whether organized under the laws of Georgia, the laws of another State, or the laws of the United States, doing business in the State of Georgia.

(b) 'Company' means any bank, corporation, partnership, joint stock company, business trust, voting trust, association or similarly organized group of persons, whether incorporated or not, and includes the shareholders and those persons who otherwise own the company and including any foreign corporation or other organization or association doing business in Georgia, but shall not include any corporation or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes; no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.

(c) 'Bank holding company' means any company incorporated or organized under the laws of the State of Georgia or doing business in Georgia, which directly or indirectly owns, controls or holds, with power to vote, 15 percent or more of the voting stock of each of 2 or more banks.

(d) A company will be construed to own, control or hold, with power to vote, stock indirectly whenever any officer or shareholder of such company or any natural person included within the definition of 'company' in section (b) of this Act or any member of the immediate family of such officer or

shareholder or of such natural person, shall own, control or hold, with power to vote, such stock. Immediate family includes a spouse, children, mother, father, brother, and sister.

Sec. 3. It shall be unlawful for any company directly or indirectly to own, control, vote, or hold, with power to vote the same, 15 percent or more of the voting stock of each of 2 or more banks, except that it shall not be unlawful for a company to continue to own, control, vote, or hold, with power to vote, such voting stock as it owns, controls, or holds on the effective date of this act. Also, in municipalities now having branches of a bank with a holding-company relation, such bank may make branches of existing holding-company banks; and in the future in cities of over 80,000 population, according to the 1950 or subsequent census, now having branches of a bank, present branches will have the same privilege of additional branches as permitted to other banks.

Sec. 4. It shall be unlawful for any company directly or indirectly to own, control, vote, or hold, with power to vote the same, 15 percent or more of the voting stock of a bank holding company, except that it shall not be unlawful for a company to continue to own, control, vote, or hold, with power to vote, that stock of a bank holding company which it owns, controls, or holds on the effective date of this act.

Sec. 5. It shall be unlawful for any company hereafter to acquire, with power to vote the same, 15 percent or more of the voting stock of each of 2 or more banks, except that it shall not be unlawful for any company to acquire, with power to vote the same, any stock in banks, a majority of whose voting stock such company owns, holds, or controls on the effective date of this act.

Sec. 6. It shall be unlawful for any company to acquire, with power to vote the same, 15 percent or more of the voting stock of a bank holding company.

Sec. 7. It shall be unlawful for any foreign company owning, controlling, or holding, with power to vote the same, 15 percent or more of the voting stock of each of 2 or more banks, to vote more than 15 percent of the stock of more than 1 such bank in any 1 year, except that it shall not be unlawful for a company to vote that voting stock which it owns, controls, or holds on the effective date of this act.

Sec. 8. This act shall not apply to the holding by a com-

pany in respect of its owning, controlling, or holding, with power to vote, stock in a bank or banks or bank holding company or companies in a fiduciary capacity, unless such stock is held for the benefit of another company or for the benefit of a majority of the stockholders of such bank.

Sec. 9. Any company which violates any provision of this act shall, upon conviction, be fined not less than \$500 nor more than \$1,500. Each day on which such violation occurs will constitute a separate offense.

Sec. 10. If any provision of this act or the application of any such provision to any person or circumstance shall be held invalid, the remainder of the act, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be effected thereby.

Sec. 11. All laws and parts of law in conflict with this act hereby are repealed.

(Ga. Laws 1956, Vol. 1, pp. 309-312. Repealed February 9, 1960. See Code of Ga. Anno., Section 13-207.)

## APPENDIX D

### Summary of Branch Banking Statutes of the 50 States, Puerto Rico, and Virgin Islands

#### States Permitting Statewide Branch Banking

State	Citation
Alaska	Sess. Laws of Alaska, Section 3.208
Arizona	Arizona Revised Stat. Anno., Sec. 6-223
California	Calif. Financial Code Anno., Sec. 500
Connecticut	Gen. Stat. of Conn., Revision of 1958, Sec. 36-59
Delaware	2 Del. Code Anno., Title 5, Sec. 770
Hawaii	Revised Laws of Hawaii, Sec. 178.39
Idaho	Idaho Code, Sec. 26-1001
Louisiana	La. Revised Stat., Title 6, Sec. 54
Maryland	Anno. Code of Md. 1957, Art. 11, Sec. 65
Nevada	Nevada Revised Stat. Title 55, Ch. 669, Sec. 660.010
North Carolina	Gen. Stat. of N.C., Sec. 53-62
Oregon	Oregon Rev. Stat., Sec. 714.020
Rhode Island	Gen. Laws of R. I., Sec. 19-1-13
South Carolina	Code of Laws of S.C., Sec. 8-57
South Dakota	S.D. Code of 1939, Sec. 6.0402
Utah	Utah Code Anno., Sec. 7-3-6
Vermont	Vermont Stat. Anno., Title 8 Sec. 501
Washington	Revised Code of Wash., Sec. 30.40.020
Puerto Rico	Laws of P.R. Anno., Title 7, Sec. 111 (i)

## States Permitting Branch Banking Within Limited Areas

State	Citation
Alabama	Acts of 1953, 1955, 1957; Code of Alabama, Sec. 125 (1)
Georgia	Code of Ga. Anno., Sec. 13-203.1
Indiana	5 Burns Ind. Stat. Anno., Sec. 18-1707
Kentucky	Ky. Revised Stat., Sec. 287.180
Maine	Revised Stat. of Maine, Ch. 59, Sec. 19-C (1961 Supp.); Ch. 59, Sec. 124 (1961 Supp.)
Massachusetts	Mass. Gen. Laws Anno., Ch. 172, Sec. 11 (1961 Supp.) Ch. 172 A, Sec. 12
Michigan	Mich. Stat. Anno., Secs. 23.762, 23.762 (1)
Mississippi	Miss. Code, Secs. 5228, 5229
New Jersey	N.J. Stat. Anno., Sec. 17:9A-19
New Mexico	N.M. Stat. Anno., Sec. 48-2-17
New York	Book 4, Banking Law, Sec. 105
Ohio	Page's Ohio Revised Code Anno., Sec. 1103.09
Pennsylvania	Purdon's Pa. Stat. Anno., Title 7, Sec. 819-294.1
Tennessee	Tenn. Code Anno., Sec. 45-211
Virginia	Code of Va., Art. 3, Sec. 6-26

## States Prohibiting Branch Banking

Arkansas*	Ark. Stat. 1947 Anno., Sec. 67.319
Colorado	Colo. Revised Stat., Sec. 14-13-1
Florida *	Fla. Stat. Anno., Sec. 659.06
Illinois	Smith-Hurd Ill. Anno. Stat., Ch. 16-1/2, Sec. 106
Iowa*	Ia. Code Anno., Sec. 528.51
Kansas*	Gen. Stat. of Kansas Anno., Sec. 9-111 (1959 Supp.)
Minnesota	Minn. Stat. Anno., Sec. 48-34
Missouri*	Vernon's Anno., Mo. Stat., Sec. 362.105
Montana	Revised Codes of Mont. Anno., Sec. 5-1028
Nebraska*	Revised Stat. of Neb., Sec. 8-1,105
North Dakota*	N. D. Revised Code, Sec. 6-03-14
Oklahoma*	Okla. Stat. Anno., Title 6, Ch. 19, Sec. 461
Texas	Vernon's Civil Stat. of Texas Anno., Art 342-903
West Virginia	W. Va. Code Anno., Sec. 3131
Wisconsin*	West's Wisc. Stat. Anno., Sec. 221.04

## States with No Legislation Authorizing Branch Banking

New Hampshire  
Wyoming  
Virgin Islands

\* These states permit certain offices with limited powers only.



Filed September 26, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action Number 1857-62

[Title omitted]

OPPOSITION OF J. W. JEANSONNE, STATE BANK COMMISSIONER  
OF LOUISIANA TO THE MOTION FOR SUMMARY JUDGMENT BY  
DEFENDANT, COMPTROLLER OF THE CURRENCY, AND WHITNEY  
NATIONAL BANK IN JEFFERSON PARISH, INTERVENING DE-  
FENDANT, AND CROSS-MOTION FOR SUMMARY JUDGMENT.

Now comes Intervening Plaintiff, J. W. JEANSONNE, State  
Bank Commissioner of Louisiana, who opposes the motions  
for summary judgment filed herein by the Defendant and  
Intervening Defendant, and cross-moves for summary judg-  
ment on the following grounds:

1

There is no genuine issue as to any material facts upon  
which plaintiffs and Intervening-Plaintiffs rely in support  
of cross-motions for summary judgment; and Plaintiffs are  
entitled to summary judgment as a matter of law.

BENTLEY G. BYRNES,  
*Special Assistant Attorney General and*  
*Attorney for,*  
*J. W. Jeansonne, State Bank Commissioner*  
403 California Company Building,  
New Orleans 12, Louisiana.

LIST OF EXHIBITS IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT BY INTERVENING PLAINTIFF, J. W. JEANSONNE, STATE BANK COMMISSIONER OF LOUISIANA.

1. Intervening Plaintiff adopts in support of his Motion for Summary Judgment the list of exhibits filed on behalf of Plaintiffs.

2. J. W. Jeansonne Affidavit, designated "Jeansonne, Exhibit No. 1".

Filed September 26, 1962

INTERVENING PLAINTIFF, J. W. JEANSONNE

EXHIBIT 1

STATE OF LOUISIANA,  
Parish of Avoyelles:

Before me, the undersigned authority, personally came and appeared:

J. W. JEANSONNE, a person of the full age of majority and a resident of Marksville, Parish of Avoyelles, State of Louisiana, who after being by me, Notary, first duly sworn, did depose and say that:

1

I am the duly appointed and qualified State Bank Commissioner of Louisiana, and as such, I am charged by law with the duty of administering and enforcing the banking laws of Louisiana.

2

It is and has been the policy of the State of Louisiana to protect and foster the welfare and growth of independent unit banks, institutions owned and having their origins in local communities and deriving their business chiefly from the industrial, commercial and farming activities located therein. It was in furtherance of this policy that the State of Louisiana by statute prevented the undesirable concentration of control of banks and bank credits in the hands of a few large banks by prohibiting banks from expanding their activities into Parishes (Counties) beyond the Parish in which said banks are chartered to do business.

To the best of my knowledge, until the Whitney National Bank of New Orleans created the Whitney Holding Corporation for the express and announced purpose of expanding its operations into Jefferson Parish, Louisiana had not been faced with an attempt by a bank to frustrate its established policy by circumvention of the prohibition against branch banking through the medium of a holding company. Faced for the first time with the attempt by the Whitney National Bank, which was limited by both Federal and State law to carry on its banking business only in the Parish of Orleans, to expand its activities into the adjoining Jefferson Parish by means of creating, from its own resources, a bank holding corporation designed to own all of the stock of the existing Whitney National Bank as well as all of the stock of a proposed Whitney operation in Jefferson Parish, I requested the Attorney General of the State of Louisiana to render an opinion to me on the legality of this.

As a result of my request, the Attorney General rendered his written opinion to me as State Bank Commissioner. A copy of said opinion is attached to this affidavit as Exhibit 1.

Confronted with this effort by the Whitney National Bank to violate or circumvent the long existing Federal and Louisiana bank branching prohibitions merely by means of the creation of a holding company, the Louisiana Legislature enacted Act No. 275 of 1962, copy of which is also attached to this affidavit as Exhibit 2. Representatives of the Whitney organization desperately attempted to defeat this legislation during the legislative proceedings, but nevertheless the House of Representatives voted eighty to sixteen in favor of it, and the Senate voted twenty-eight to seven in favor thereof.

Because the Whitney National Bank of New Orleans and the holding company created by it were racing the Legislature of Louisiana in an attempt to open banking facilities in Jefferson Parish, the Governor of the State of Louisiana, pursuant to Constitutional authority, declared Act No. 275 of 1962 to be emergency legislation and it became law when signed by the Governor on July 10, 1962.

As the State Bank Commissioner I am charged with the duty of enforcing the Louisiana Bank Holding Company Act and preventing evasions thereof. Pursuant to this statutory obligation, I have appeared in this suit for the purpose of applying to this Court for such orders as may be necessary to enjoin and prohibit the Comptroller of the Currency from issuing his certificate to authorize the opening of banking facilities by the Whitney organization in violation of Act 275 of 1962 and the other applicable statutes, both Federal and State.

J. W. JEANSONNE.

Sworn to and subscribed before me this 21st day of September, 1962.

B. C. BENNETT,  
*Notary Public.*

Filed September 26, 1962

### EXHIBIT 3

SENATE BILL NO. 30, LEGISLATURE, STATE OF GEORGIA, by  
Senator Lambert

A bill to be entitled "An act to provide for the prohibition of the owning, controlling or holding by certain companies of more than 15 percent of voting stock of banks as defined therein and of bank holding companies as defined therein; to define company as included in said prohibition to include any bank, corporation, partnership, joint stock company, business trust, voting trust, association, or similarly organized group of persons and the shareholders and those persons who otherwise own the company or are officers thereof; to provide that stock held by the immediate family of a shareholder, owner, or officer of a company as defined in the act shall be construed to be owned, controlled or held by the company; to provide for restriction of certain foreign companies in voting stock of said bank or holding company; and to provide for certain exceptions to said prohibition and restriction and for other purposes."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA  
AS FOLLOWS:

Section 1. The maintenance of competitive services between banks has been found to be the best method of serving the public. There are dangers in the concentration of economic power through centralized control of banks. It is, therefore, held to be in the public interest to curtail such concentration of economic power by preventing the expansion of bank holding companies and similar organizations.

Sec. 2. Unless the context requires otherwise: (a) "Bank" means any national bank or State bank, banking association, savings bank or trust company, whether organized under the laws of Georgia, the laws of another State, or the laws of the United States, doing business in the State of Georgia.

(b) "Company" means any bank, corporation, partnership, joint stock company, business trust, voting trust, association, or similarly organized group of persons, whether incorporated or not, and includes the shareholders and those persons who otherwise own the company and including any foreign corporation or other organization or association doing business in Georgia, but shall not include any corporation or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.

(c) "Bank holding company" means any company incorporated or organized under the laws of the State of Georgia or doing business in Georgia, which directly or indirectly owns, controls, or holds, with power to vote, 15 percent or more of the voting stock of each of 2 or more banks.

(d) A company will be construed to own, control, or hold, with power to vote, stock indirectly whenever any officer or shareholder of such company or any natural person included within the definition of "company"

in section (b) of this act or any member of the immediate family of such officer or shareholder or of such natural person, shall own, control or hold, with power to vote, such stock. Immediate family includes a spouse, children, mother, father, brother and sister.

Sec. 3. It shall be unlawful for any company directly or indirectly to own, control, vote, or hold, with power to vote the same, 15 percent or more of the voting stock of each of 2 or more banks, except that it shall not be unlawful for a company to continue to own, control, vote, or hold, with power to vote, such voting stock as it owns, controls, or holds, on the effective date of this act. Also, in municipalities now having branches of a bank with a holding-company relation, such banks may make branches of existing holding-company banks; and in the future in cities of over 80,000 population, according to the 1950 or subsequent census, now having branches of a bank, present branches will have the same privilege of additional branches as permitted to other banks.

Sec. 4. It shall be unlawful for any company directly or indirectly to own, control, vote, or hold, with power to vote the same, 15 percent or more of the voting stock of a bank holding company, except that it shall not be unlawful for a company to continue to own, control, vote, or hold, with power to vote, that stock of a bank holding company which it owns, controls, or holds on the effective date of this act.

Sec. 5. It shall be unlawful for any company hereafter to acquire, with power to vote the same, 15 percent or more of the voting stock of each of 2 or more banks, except that it shall not be unlawful for any company to acquire, with power to vote the same, any stock in banks, a majority of whose voting stock such company owns, holds, or controls, on the effective date of this act.

Sec. 6. It shall be unlawful for any company to acquire, with power to vote the same, 15 percent or more of the voting stock of a bank holding company.

Sec. 7. It shall be unlawful for any foreign company owning, controlling, or holding, with power to vote the same, 15 percent or more of the voting stock of each of 2 or more banks, to vote more than 15 percent of the

stock of more than 1 such bank in any 1 year, except that it shall not be unlawful for a company to vote that voting stock which it owns, controls, or holds on the effective date of this act.

Sec. 8. This act shall not apply to the holding by a company in respect of its owning, controlling, or holding, with power to vote, stock in a bank or banks or bank holding company or companies in a fiduciary capacity, unless such stock is held for the benefit of another company or for the benefit of a majority of the stockholders of such bank.

Sec. 9. Any company which violates any provision of this act shall, upon conviction, be fined not less than \$500 nor more than \$1,500. Each day on which such violation occurs will constitute a separate offense.

Sec. 10. If any provision of this act or the application of any such provision to any person or circumstance shall be held invalid, the remainder of the act, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

Sec. 11. All laws and parts of law in conflict with this act hereby are repealed.

Filed September 26, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

ORDER GRANTING MOTION OF THE NATIONAL ASSOCIATION OF  
SUPERVISORS OF STATE BANKS FOR LEAVE TO APPEAR AS  
AMICUS CURIAE

The National Association of Supervisors of State Banks, having requested by Motion that it be permitted to appear as *Amicus Curiae* in the above-entitled proceeding; and the



Court having fully considered the Motion; and it appearing that all of the above-named parties have consented:

It is ordered that the Motion of the National Association of Supervisors of State Banks for leave to appear as *Amicus Curiae* in this proceeding be and the same is hereby granted.  
Dated: September 26, 1962.

/s/ JOHN J. SIRICA,  
District Judge.

Filed September 27, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

PLAINTIFFS' SUPPLEMENTAL STATEMENT OF GENUINE ISSUES  
UNDER LOCAL RULE 9H IN OPPOSITION TO INTERVENING  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT.

Come now the plaintiffs, and with respect to the affidavit of James Gilly, Jr., President of Intervening Defendant, dated September 8, 1962, file the following Supplemental Statement of Genuine Issues Under Local Rule 9(h) in opposition to Intervening Defendant's Motion for Summary Judgment:

1. In paragraph "2" of said affidavit, Mr. Gilly states that Whitney National Bank in Jefferson Parish "will have no officer or employee common with Whitney National Bank in New Orleans" other than four directors and Mr. Gilly himself, who will serve as President of Whitney-Jefferson and in a top officer capacity at Whitney-New Orleans. While this statement may be true in some respects, it conveys a false impression. The truth is that all officers and directors of both Whitney-Jefferson and Whitney New Orleans, will, at all times, be subject to the common control, direction and supervision of the officers and directors of Whitney Holding Corporation, all of whom are subject to the absolute control of Whitney National Bank of New Orleans. Thus, Mr. Gilly's statement may be true as to "form", but it is patently false in reality.

2. Whitney-Jefferson has not yet been recognized as a "newly organized bank", as stated by Mr. Gilly at paragraph "2" of his affidavit (See *Whitney Exhibit 6*, attached to the affidavit). It has not yet received a charter from the Comptroller, and cannot engage in any banking business until the Comptroller issues a certificate, which he is presently enjoined from doing. Whitney-Jefferson is currently no more than an association created under the National Banking Act.

3. Plaintiffs do not agree with and oppose as untrue the statement that "Whitney-Jefferson will operate a banking house entirely separate from that of the Whitney-New Orleans" (*Gilly Affidavit*, P. 2). Whitney-New Orleans has several branches in the City of New Orleans itself which "operate in banking houses separate from the main Whitney-New Orleans". But, they are still mere branches. Plaintiffs state the same will be true of Whitney-Jefferson.

4. Plaintiffs urge the Court to recognize that, contrary to the impression sought to be conveyed in Mr. Gilly's affidavit (*Para. 4*), Whitney-Jefferson did not allegedly subscribe or pay for any stock in the Federal Reserve Bank of Atlanta until June 15, 1962, 6 full days after this action had begun and the Comptroller was withholding, subject to this suit, the issuance of any certificate to Whitney-Jefferson (See *Gilly Affidavit*, P. 14). Thus, this stock was subscribed and paid for by Whitney with full knowledge of the injunction voluntarily in effect herein.

5. Plaintiffs deny that, in effect or practice, the capital and surplus of Whitney-Jefferson and Whitney-New Orleans, totaling \$30,600,000. will be used separately to require decreased "loan limits" for the two banks, as asserted at paragraph "5" of Mr. Gilly's affidavit. On the contrary, in the same paragraph of the affidavit, Mr. Gilly admits that the two banks, subject to the common control of the Holding Corporation created by Whitney-New Orleans, will participate in loans with each other. Please see also *Plaintiffs' Exhibit "B"*, the letter of October 28, 1961 of President Berry of Whitney-New Orleans to his shareholders, where he states, at page 2:

"From the depositors' point of view, those in the smaller bank will be assured of the same management which directs the larger one. . . . They will be assured of

access to the large loan limits of the combined banks" (Emphasis supplied.)

6. The Court is urged to note, contrary to the overall impression sought to be conveyed by paragraph "6" of Mr. Gilly's affidavit, it is boldly admitted finally that

"the Whitney-Jefferson proposes to clear through the Whitney-New Orleans."

7. Contrary to the impression sought to be conveyed in paragraph "7" of Mr. Gilly's affidavit, Mr. Gilly fails to show that it is common for "branches" of national banks to have their own vaults. This condition is not limited to independent banks.

8. Mr. Gilly's statement in paragraph "8" of his affidavit is basically untrue. Each check, each piece of stationery and each form used by Whitney-New Orleans and Whitney-Jefferson will carry in bold, large letters the words:

"WHITNEY NATIONAL BANK".

Moreover, Whitney's evidence of record in this case contains proof of checks carrying both Whitney-New Orleans and Whitney-Jefferson on their face.

9. Plaintiffs deny the impression sought to be conveyed by paragraphs "9" and "10" of Mr. Gilly's affidavit. Plaintiffs' exhibits in support of their last brief before this Court consisted of letters from Whitney's own customers, all written on about the same date, stating that they, Whitney-New Orleans customers, looked forward to carrying their accounts at Whitney-New Orleans' "branch" to be established in Jefferson Parish. In truth and in fact, Mr. Gilly's affidavit now admits that this "normal banking practice" will be followed.

10. Plaintiffs deny, for lack of any evidence of record, that "no shareholder requested receipt of the value of his shares", as alleged in Mr. Gilly's affidavit, paragraph 15. What happened to the dissenting shareholders? Who bought them out? Or, did they continue to hold their shares throughout effectuation of the Whitney "plan"? These are all matters still genuinely in issue.

11. Plaintiffs urge the Court to recognize, under para-

graphs 16 and 17 of Mr. Gilly's affidavit of September 8, 1962, that

(a) Whitney-Jefferson did not even instruct or authorize its real estate agent to enter into a lease "for a temporary site" until June 13, 1962, 4 days after this action was filed and the Comptroller was withholding his certificate pending the outcome of this suit;

(b) Said lease was not executed until June 15, 1962, 6 days after this suit was filed;

(c) Whitney-Jefferson did not acquire "its proposed permanent site" until June 29, 1962, 20 days after this suit was filed and 2 days after Judge Hart signed the temporary restraining order herein.

The remaining allegations of paragraph 16 are self serving and argumentative.

EDWARD L. MERRIGAN,  
Attorney for Plaintiffs.

Filed September 27, 1962

PLAINTIFFS' EXHIBIT "Z-1"

January 31, 1962.

The Honorable James J. Saxon,  
The Comptroller of the Currency,  
Washington 25, D. C.

Dear Mr. Saxon:

Reference is made to the application by Whitney Holding Corporation, New Orleans, Louisiana, for the Board's approval of the formation of a bank holding company pursuant to section 3(a)(1) of the Bank Holding Company Act. The Corporation seeks approval of its acquisition of the stock of (1) Crescent City National Bank, New Orleans, Louisiana (a proposed new bank), into which would be consolidated the existing Whitney National Bank of New Orleans, under the latter title, and (2) the Whitney National Bank in Jefferson Parish, Louisiana (a proposed new bank). Pursuant to section 3(b) of the Act, a copy<sup>5</sup> of the application

was transmitted to your predecessor, Mr. Gidney, with a request for his views and recommendations. In a letter dated October 11, 1961, Mr. Gidney advised the Board, in part that "In view of the favorable conditions disclosed by this study [of the application] it is recommended that you give your approval to this application."

On January 17, 1962, there was conducted before the Board a public oral presentation of views on Whitney Holding Corporation's proposal. A copy of the stenographic transcript of this proceeding was given to Mr. Mortimer of your staff on January 22. As reflected in this transcript, statements in opposition to the application were presented by Mr. Louis J. Roussel, a stockholder in the Whitney National Bank, by Mr. Clem H. Sehrt, an attorney who represented minority shareholders of the Whitney National Bank, and by Mr. Victor J. Passera, President, The National Bank of Commerce in Jefferson Parish. Mr. Roussel and Mr. Sehrt described certain actions allegedly taken by Whitney National Bank's management, which they charged were in violation or circumvention of existing law and contrary to the rights of the Bank's shareholders (Tr. 25-50). In reply, Mr. Malcolm L. Monroe, counsel for Applicant, stated that, with the exception of

Filed September 27, 1962

EXHIBIT "Z-2"

matters relating to the charter of the proposed bank holding company, all the matters raised by Mr. Roussel "... have been fully taken up or disclosed or subject to examination by the Comptroller. The Comptroller's files have full reports. \* \* \* And the Comptroller's examiners have been into every matter that has been discussed by him [Mr. Roussel]" (Tr. 54). Similar replies by Mr. Monroe relative to Mr. Sehrt's statements are found at pages 55-56 of the transcript.

In view of the bearing that these matters might have on the Board's decision on Whitney Holding Corporation's application, the Board would appreciate any comments that you may have relative to these statements and responses,

which appear in their entirety at pages 25 through 56 of the transcript of the oral presentation.

Very truly yours,

(Signed) MERRITT SHERMAN,  
*Secretary.*

Approved, minutes, Jan. 31, 1962.

TJO'U:vr  
1/31/62

Filed September 27, 1962

EXHIBIT "AA-1"

TREASURY DEPARTMENT  
Comptroller of the Currency  
Washington 25

February 27, 1962.

Board of Governors  
of the Federal Reserve System,  
Washington 25, D. C.

Gentlemen:

In accordance with the request contained in your letter of January 31, 1962, I have reviewed the transcript of proceedings of the oral hearing on the application for approval of the Whitney Holding Corporation which was held January 17, 1962.

For your convenience of reference, my observations will deal with the items listed at 1 to 10 in the transcript where comment appears pertinent and such further comments as deemed proper.

(1) The Whitney Holding Corporation is being organized for the purpose of establishing an affiliated bank in Jefferson Parish, Louisiana; and for the purpose of acquiring all the stock of Whitney National Bank as well as the affiliated bank. Since all of the stock of Whitney National Bank (with the exception of qualifying shares) would be owned by the holding company, the effect would be to prevent minority representation through cumulative voting.

(3) The purchase of the real estate referred to did represent a violation of law. The bank purchased a 1/24 interest

in "J. W. Pharr" property in June 1957 for \$4,500.00. 18/24 of the property was previously owned, having been acquired d. p. c. in 1933. The 1/24 interest is currently carried on the bank's books at \$1.00 and is listed in the current report of examination as a violation of Section 5137, U. S. R. S.

(4) The listing of advisory board members and directors as a group is improper and the bank has been advised to discontinue the practice.

(5) Our examiner reports that the details of the sale of the property on Veterans Highway and Jefferson Parish were spread on the minutes of the board of directors and approved by them. We have no reason to suspect improper procedure; however, the matter will be further investigated.

Filed September 27, 1962

EXHIBIT "AA 2"

(8) At the 1962 annual meeting, the shareholders of the Whitney National Bank reduced the number of directors to be elected from 20 to 7. Determination of the number of directors to be elected is a prerogative of the shareholders. The effect of the reduction was to require a larger number of shares to elect a minority director through cumulative voting.

Mr. Roussel's comments on dividends and Mr. Berry's salary reflect his desires for high dividends as opposed to the director's conservative policies. Neither Mr. Berry's salary nor the conservative dividends have been criticized by this office.

With respect to the comments on the growth of the bank and comparative figures, the Whitney National Bank is the largest bank in Louisiana and it is conservatively operated, and in good condition.

Other comments with respect to the legality and merits of the holding company are matters on which a previous Comptroller of the Currency has expressed himself; therefore, further enlargement on the subject is deemed undesirable.

Should you wish further information on the matter, please advise me.

Very truly yours,

JAMES J. SAXON,  
Comptroller of the Currency.



# The New Frontiersman of banking

James J. Saxon takes a much broader view of the job of Comptroller of the Currency than his predecessors. He feels his office should lead banking industry



For years, the Comptroller of the Currency was a little-known Treasury Dept. official whose job, in the public's mind at least, seemed to have changed little since Civil War days—that of regulating currency issued by national banks. But Compt. James J. Saxon, a dapper 46-year-old attorney and former Chicago banker, is rapidly making this image obsolete.

**Multiple changes.** Saxon is jolting the banking industry with proposals and actions that amount to an overhaul of its entire structure. He is studying 43 specific changes in bank regulations, ranging from the technical task of electing bank directors to the highly controversial subject of whether federal law should take precedence over state law. The latter proposal, if accepted, could open such states as Illinois and New York to statewide branch banking.

Though favoring bank expansion, Saxon has taken a strong public stand against undue concentration of banking assets. He played a key role, for example, in the defeat of such undertakings as Morgan Guaranty Trust Co.'s attempt to set up a giant \$6-billion bank holding company in New York State. Saxon also has streamlined the Comptroller's own operations by speeding the processing of mergers and the chartering of new banks.

**Skirmishes.** In an industry where even minor alterations win acceptance at glacial speed, Saxon's moves are sure to rouse opposition. State banking officials see his actions as a resumption of an old federal drive

job. Saxon reached an understanding that the Justice Dept. would keep him informed on all actions in the banking field. But early this year, Kennedy brought antitrust suits against three New Jersey banks without forewarning Saxon. Saxon says he tried to reach Kennedy twice by phone, but then "I saw red." He promptly denounced the "zealots" in Justice. Relations between the two agencies have since improved, but they are still strained.

**Disputed issues.** If Saxon has his way, there will be a lot more banks with a lot more branches, more liberal lending limits, less concentration in banking, and the gradual centralization of power within the hands of the Comptroller.

In his traditional role, the Comptroller has done little more than conduct bank examinations and rule on mergers and branch applications.

Saxon, though, takes a broader view of the position. "Congress didn't create the Comptroller's job just for housekeeping," he explains. "Someone has to be the leader of the banking industry."

With this concept in mind, Saxon has projected himself into the middle of a hot dispute: how banks are to expand and who is to regulate them.

**Dual control.** Under present law, each state has the power to permit or restrict expansion moves by nationally or state-chartered banks—whether by branching, merger, or holding company. Thus, California allows statewide branch banking, Illinois bans it, and New York carves itself into nine districts, each with



**Compt. James J. Saxon**, who took office in November, advocates sweeping changes in the banking industry.

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**Skirmishes.** In an industry where even minor alterations win acceptance at glacial speed, Saxon's moves are sure to rouse opposition. State banking officials see his actions as a resumption of an old federal drive to break down the dual banking system that has been traditional in the U.S. They accuse him of usurping their powers by trying to shift all regulatory authority to Washington. Saxon denies this. But he's also been having trouble with federal banking men, who think he is trying to dominate the scene.

Saxon, in fact, is one of the few Administration officials bold enough to have challenged the President's younger brother, Atty. Gen. Robert F. Kennedy. Before accepting the

job, Saxon reached an understanding that the Justice Dept. would keep him informed on all actions in the banking field. But early this year, Kennedy brought antitrust suits against three New Jersey banks without forewarning Saxon. Saxon says he tried to reach Kennedy twice by phone, but then "I saw red." He promptly denounced the "zealots" in Justice. Relations between the two agencies have since improved, but they are still strained.

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**Dual control.** Under present law, each state has the power to permit or restrict expansion moves by nationally or state-chartered banks—whether by branching, merger, or holding company. Thus, California allows statewide branch banking, Illinois bans it, and New York carves itself into nine districts and allows branching only within districts, except in the case of New York City and neighboring suburbs. Some states prohibit bank holding companies, while others allow them.

But state decisions can be vetoed by federal agencies. The Federal Reserve Board of Governors has the final word on state-chartered member banks and holding companies; the Federal Deposit Insurance Corp. on nonmember insured state banks. The Comptroller is given

jurisdiction over national banks. In all cases, though, the federal agencies are obligated to stay within limits laid down by state law. Each of these agencies must check with the other before making a ruling, and opinions must also be obtained from Justice.

Obviously, there is lots of room for conflict. This week, for example, the Fed voted against a new Florida bank holding company, though Justice and Saxon had seen no objections. As Saxon sees it, the present system is a hodge-podge of antiquated, conflicting federal and state law. He argues the system inhibits, rather than encourages, economic growth by unnaturally preventing adequate bank expansion.

"We must have a maximum of flexibility within the banking industry," Saxon says. He wants banks free to choose their expansion route between mergers, direct branches, or holding companies.

**Saxon's solution.** The way out, in Saxon's view, is to get Congress to give the Comptroller the authority to approve mergers and branching plans of national banks without regard to state law. In effect, this would force states to liberalize their laws, or else find all their state banks converting to national charters (state banks generally have more liberal lending limits than national banks).

But Saxon does not go along with putting regulatory control into the hands of a single agency. Such an approach was advocated recently by J. L. Robertson, one of the Fed's Board of Governors, who suggested a new Federal Banking Commission.

**Long list of problems.** Saxon has no illusions that his plans will be accepted gracefully anytime soon—if indeed they are ever accepted. But he is approaching the task with single-minded determination.

When he arrived in Washington last November, Saxon carried his own battle-plan: 24 single-spaced typewritten pages outlining what he thought was wrong with the banking system and what he intended to do about it.

Saxon's first step was to make

ing through changes in mechanics, for he has the authority to make many of these changes himself. The first group will be out next month.

The "substantive issues" will take more doing. Many would require Congressional action, and state banking authorities are against a number of them. The most controversial proposal would center on making federal law take precedence over state law.

**Pressures.** By his own actions, Saxon already is trying to exert pressure along these lines. He opposed formation of a new bank holding company in New York State, although approved by authorities there, because he felt there would be too much banking concentration. Saxon is not against expansion in New York, but he prefers branching to the merger or bank holding company route. His argument is that adding branches one at a time is less disruptive in New York's case. By opposing Morgan Guaranty's holding company, Saxon in effect is pressuring the state into liberalizing its branching laws.

In the case of Louisiana's Whitney National Bank, Saxon is also trying to get more liberal state law. In this instance, he favors formation of a holding company that was set up specifically to skirt state rules that limit branching into parishes where a bank already exists. And he has gone to court to challenge a state law hurriedly passed to prohibit the new holding company.

**Qualifications.** In these and other matters, Saxon is stirring more of a fuss than any Comptroller in recent history. Some bankers regard him as an ambitious man, using his present post as a springboard for more lofty ventures. Even so, they say he is eminently qualified for his job.

Saxon's first job out of college was as an attorney in the Comptroller's office. Later he held various Treasury Dept. posts, including that of attache to Gen. Douglas MacArthur. One of his jobs was to remove several billion dollars worth of gold bullion from Corregidor before the



## These are the many facets of BLISS

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Newton Upper Falls, Massachusetts

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##### The Rockwood Sprinkler Division:

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Fire Fighting Systems • Ball Valves  
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Traffic Signal Systems • Industrial Timers

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Saxon's first step was to make an industrywide survey of banking problems. He then boiled these down to 43 separate issues, and appointed a group of committees to make recommendations on them.

Saxon's "43" fall into two general categories: the first he calls "corporate mechanics," which includes such topics as bank examinations, election of bank directors, bank stock dividends; the second, he refers to as "substantive issues"—these are broader concepts.

Saxon expects little trouble push-

saxon already is trying to exert pressure along these lines. He opposed formation of a new bank holding company in New York State, although approved by authorities there, because he felt there would be too much banking concentration. Saxon is not against expansion in New York, but he prefers branching to the merger or bank holding company route. His argument is that adding branches one at a time is less disruptive in New York's case. By opposing Morgan Guaranty's holding company, Saxon in effect is pressuring the state into liberalizing its branching laws.

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Saxon himself admits he has made some mistakes. He regrets some incidents where he has "popped off in public." But he feels the controversies have gained his office new standing and have stimulated serious discussion of banking problems. In the long run, he says, this will make the task of "modernizing" the banking system easier. **End**

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# BLISS

SINCE 1857

For information, write to:

E. W. BLISS COMPANY • CANTON, OHIO

Filed October 5, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

OPPOSITION OF DEFENDANT COMPTROLLER OF THE CURRENCY TO  
CROSS-MOTION OF INTERVENING PLAINTIFF J. W. JEANSONNE  
FOR SUMMARY JUDGMENT.

Comes now the defendant Comptroller of the Currency,  
by his undersigned counsel, and opposes the cross-motion  
of intervening plaintiff J. W. Jeansonne for summary judg-  
ment herein on the ground that said intervening plaintiff  
is not entitled to judgment as a matter of law. The pending  
motions of the defendant and the intervening defendant  
should be granted and all pending motions of the plaintiffs  
and the intervening plaintiffs should be denied.

JOSEPH D. GUILFOYLE,  
*Acting Assistant Attorney General.*

DONALD B. MACGUINEAS,  
DAVID V. SEAMAN,  
*Attorneys, Department of Justice*  
*Attorneys for Defendant,*  
*Comptroller of the Currency.*

*Of Counsel:*

DAVID C. ACHESON,  
*United States Attorney,*

Filed October 5, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

STATEMENT OF DEFENDANT COMPTROLLER OF THE CURRENCY  
IN RESPONSE TO THE STATEMENT OF FACTS SUPPORTING THE  
CROSS-MOTION OF INTERVENING PLAINTIFF J. W. JEANSONNE  
FOR SUMMARY JUDGMENT.

The cross-motion of intervening plaintiff J. W. Jeansonne for summary judgment, filed herein on September 26, 1962, does not include the statement required by Local Civil Rule 9(h). However, the following is stated in an untitled paper attached to the motion: "Intervening Plaintiff adopts in support of his Motion for Summary Judgment the list of exhibits filed on behalf of Plaintiffs." For present purposes, therefore, we assume that intervening plaintiff intends to adopt as his own the statement of material facts accompanying plaintiffs' cross-motion for summary judgment, filed on July 24, 1962.

Accordingly, we adopt by reference our response thereto, filed on August 10, 1962.

JOSEPH D. GUILFOYLE,

*Acting Assistant Attorney General,*

DONALD B. MACGUINEAS,

DAVID V. SEAMAN,

*Attorneys, Department of Justice*

*Attorneys for Defendant,*

*Comptroller of the Currency.*

*Of Counsel:*

DAVID C. ACHESON,

*United States Attorney,*

Filed November 16, 1962

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF  
COLUMBIA CIRCUIT

Civil Action No. 1857-62

OFFICIAL TRANSCRIPT OF PROCEEDINGS

October 11, 1962.

MOTIONS & CROSS-MOTIONS FOR SUMMARY JUDGMENT AND  
MOTION TO DISMISS

[9] The Court will ask counsel on both sides to respond to the question of the Court as to whether there is any substantial question of fact involved in this case, or whether it is fully agreed by all that the question to be presented to the Court is strictly a question of law.

We all know if there is any substantial question of fact that is a bar to the Court proceeding in a motion for summary judgment.

Mr. Merrigan: We have filed in the case, as you probably know, Your Honor, statements under Rule 9(h) regarding certain differences we have with the facts relied upon by the intervening defendant for summary judgment.

The Court: Do you mean your construction of the legal effect of those facts?

Mr. Merrigan: Well, the legal effect and the facts as they are presented by the intervening defendant. I don't think there is any difference of fact at all between the plaintiffs and the defendant Comptroller, but I would be less than candid with the Court if I told you we didn't disagree most heartily with some of the material facts the intervening defendant has presented to the Court. In other words, they have made certain statements in their Rule 9(h) statement of material issues, material facts which are supposed to be without issue, which we do disagree with, and we have set them [10] out very specifically in our statement of disagreement.

Mr. Acheson: Your Honor, I would say as to that, there is no disagreement as to the facts between the intervening defendant and the plaintiffs, if by fact we mean an event,



something which occurred and can be reported; if we mean a conclusion which is drawn from that, there are different conclusions. These I submit and we have submitted in papers filed with Your Honor are mere conclusions of law, or conclusions to be drawn from undisputed facts. There are no facts as such which are in dispute. This is my assertion to Your Honor.

If Your Honor will glance through our reply to the paper filed by my learned opponent you will see in all respects I think except one these are really conclusions of law.

The one is a typographical error in which he states quite correctly that one of our papers cites a certain date and this is incorrect. That is quite true. We have made a correction of the error and aside from that I know of no event, no specific occasion, nothing which was done upon which there is any difference between us.

The Court: Can the Court properly construe the explanation of counsel for plaintiff as coinciding with the statement of counsel for defendant?

Mr. Merrigan: I would have to say again, and I have in mind most particularly the intervening defendant's contention [11] that the \$650,000 payment which was drawn out of the funds of the Whitney National Bank of New Orleans transferred to the Holding Corporation and then put in the Whitney National Bank in Jefferson Parish was a dividend.

We say that this was a withdrawal of capital funds. It goes right to the heart of the case. We say we cannot agree it was a dividend. I think that is the major issue which I take issue with.

I also take issue with the fact that the two banks, the Bank in New Orleans and the bank in Jefferson Parish, are not going to be run by the same management because the Holding Corporation consists of the same officers and directors as those who manage the New Orleans bank, and they manage the Jefferson Bank.

These are issues which go right to the heart of this case.

Mr. Acheson: Your Honor, this is exactly what I was undertaking to state to Your Honor a moment ago. Whether a sum of money paid by one institution to its parent company is a dividend or not is a matter of law. There is no doubt about the fact and my learned opponent will not disagree with me that the money was paid as stated, that it purported to be a dividend, and that it went through all the motions of a dividend.

[12] Now, whether Your Honor will conclude, if it is relevant, which I think it is not, whether it was a dividend or not or some other kind of a payment, this is a conclusion to be drawn from the facts. There is no fact which a trial could change here as to whether it was or was not a dividend.

We all know what happened. We do not disagree about what happened. We disagree only about the name which is given to it and the significance of what was done.

The Court: The passage of this sum of money counsel for the plaintiff stated is an agreed fact. You are not disputing that this money passed. The question is as to the legal effect.

Mr. Merrigan: It goes a little deeper than that, Your Honor, because we submit, and our Rule 9(h), disagreement statement, that on the basis of the testimony of Mr. Keelm Berry himself, who is the president of the Whitney National Bank of New Orleans, sworn testimony, he said it was to be a withdrawal of capital funds and in this case we are going to contend that it was a withdrawal of capital funds and it is not in the manner of calling it a dividend or anything else.

The admitted facts, the statement of the defendant, the intervening defendant, are to the effect that it was a capital withdrawal. It came out of their undivided surplus account.

[13] Mr. Acheson: Your Honor, I think my distinguished friend here has settled the matter by what he just said. He said in fact it came out of the undivided profits account. It did. This is not a withdrawal of capital. This is a dividend. There is no dispute.

Mr. Merrigan: Of course, my very distinguished opponent will agree that undivided surplus of a bank is its capital account.

Mr. Acheson: Capital account is its capital account. Its undivided profit is its account out of which dividends are paid.

This is a matter which Your Honor can decide. You need no further testimony.

Mr. Merrigan: Indeed, that is so, but we say it is an issue.

Mr. Acheson: Surely it is an issue, but it is a conclusion and not a fact.

The Court: The Court is not quite persuaded it is an issue of fact. It seems to be an issue which is founded upon agreed statement of fact, and that would cause it, in the Court's humble judgment, to be an issue of law, if it is material.

Mr. Merrigan: I would agree with Your Honor if we can simply take the facts as Mr. Acheson has agreed they are: that it did come out of the surplus account and was transferred [14] from the Whitney National of New Orleans to the Holding Company and then directly to the bank in Jefferson.

Mr. Acheson: It came out of the undivided profits of the bank, surely.

The Court: Are there any other matters that might raise questions at this time?

The Court hears no affirmative response. The Court assumes it can proceed on the basis that there is no question of fact that would prevent motions for summary judgment from being heard.

Consequently, we will proceed and the Court understands it is agreed between counsel on both sides that counsel for the plaintiff, who is also one of the movants for a motion for summary judgment, is to make the opening argument. Is that correct?

Mr. Merrigan: Yes, Your Honor.

The Court: You may proceed, Mr. Merrigan.

Filed November 5, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

## MEMORANDUM

On October 3, 1961, the Comptroller of the Currency gave preliminary approval to the formation of two new national banks, the Crescent City National Bank and the Whitney National Bank in Jefferson Parish, Louisiana, subject to approval by the Federal Reserve Board of the formation of a holding company for the purpose of acquiring the stock of such banks, pursuant to the Bank Holding Company Act of 1956. On May 3, 1962, the Federal Reserve Board approved the application of Whitney Holding Corporation to become a bank holding company by acquiring the stock of the above two mentioned banks. Subsequently, the Comptroller approved the consolidation of the existing Whitney National Bank in New Orleans into the Crescent City National Bank under the name of the Whitney National Bank in New Orleans and this was accomplished. The Holding Corporation, previously organized under Louisiana law, then completed the organization of the Whitney National Bank in Jefferson Parish by purchasing all of its stock for \$650,000.00. At that time the Articles of Association and the Certificate of Organization of the Whitney National Bank in Jefferson Parish had already been executed and filed with the Comptroller. On June 9, 1962, just as the Comptroller was about to issue a Certificate of Authority to permit that Bank to commence business this suit was instituted praying for a declaratory judgment and an injunction prohibiting him from issuing said certificate.

A temporary restraining order was issued by this Court on June 27, 1962, followed by a temporary injunction which took effect on the same day on which the Louisiana State Legislature passed a statute making it unlawful . . . for any bank holding company or subsidiary thereof to open for business whether or not the charter, permit, license or

certificate to open for business has already been issued." La. Act 275 3(5) of 1962. The Plaintiffs base their case on the contention that this statute is clearly applicable to the Whitney National Bank in Jefferson Parish and that the Defendant Comptroller may not issue a certificate of Authority to this bank in contravention of the law. While continuing this contention, the Plaintiffs urge the alternative contention that, apart from the above statute, the formation of this bank contravenes Section 36(c) of the National Banking Act, 12 U.S.C. 36(c), in combination with La. R.S. 6:45 which makes it unlawful for the Whitney National Bank in New Orleans to open a "branch" in Jefferson Parish, the Plaintiffs urging the Court to arrive at this determination by "piercing the corporate veil" of the holding company form used.

The Defendants, on the other hand, argue that Louisiana Act 275 is inapplicable to it, a national bank, but that, should the Court determine that it is applicable to the new bank; then it is unconstitutional in that it collides with the Supremacy Clause of the Constitution since it prohibits a national bank, which has been organized in compliance with the terms of the Federal Bank Holding Company Act of 1956 from commencing business in the State of Louisiana and thus is in excess of the regulatory power reserved to the states. The Defendants contend that the Whitney National Bank in Jefferson Parish is not a "branch" bank and therefore does not come within the proscription of Section 36(c) of the National Banking Act but is, on the contrary, an entity possessing the degree of separateness required by the terms of the Federal Bank Holding Company Act.

This matter is now before the Court on (1) the motion of Defendant Saxon, Comptroller of the Currency, for summary judgment; (2) the cross-motion of Plaintiff, Bank of New Orleans, for summary judgment; (3) the cross-motion of Defendant Saxon to dismiss; (4) the motion of the Intervening Defendant, Whitney National Bank in Jefferson Parish, for summary judgment; (5) the cross-motion of the Intervening Plaintiff, J. W. Jeansonne, Louisiana Bank Commissioner, for summary judgment. Upon consideration of these motions, the Points and Authorities submitted therewith, the Statements of Opposition filed thereto and the arguments advanced on hearing, and the Court being fully advised in the premises, the Court concludes, there being no genuine issue of material fact, as follows:

That the cross-motions for summary judgment raised by the Plaintiff, Bank of New Orleans and the Intervening Plaintiff, J. W. Jeansonne, State Bank Commissioner of the State of Louisiana, should be, and are, granted. Accordingly, the motions for summary judgment of the Defendant, James J. Saxon, Comptroller of the Currency and the Intervening Defendant, Whitney National Bank in Jefferson Parish are denied. Further, Defendant Saxon's cross-motion to dismiss is also denied.

The Certificate of Authority has not yet been issued by the Comptroller of the Currency to the Whitney National Bank in Jefferson Parish and there is no question that the Comptroller has no discretion to issue a certificate of authority to a new bank that will operate in a manner prohibited by law. *Commercial State Bank v. Gidney*, 174 F. Supp. 770, 778, aff'd, 278 F.2d 871 (D.C. App. 1960); *Camden Trust Co. v. Gidney*, 301 F.2d 521 (D.C. App.), cert. denied, 369 U.S. 886 (1962). Louisiana Act 275 3(5) of 1962 reads as follows: "It shall be unlawful . . . for any bank holding company or subsidiary thereof to open for business whether or not the charter, permit, license or certificate to open for business has already been issued." The Court rules that this statute is directly applicable to the proposed Defendant, Whitney National Bank in Jefferson Parish and that said statute makes it unlawful for said bank to commence business. Relying on the authority of *Brachman Securities Corp. v. Smith*, 153 N.E. 2d 806, appeal dismissed for want of substantial Federal question, 359 U.S. 311 (1959) and *Opinion of the Justices*, 151 A. 2d 236 (N.H. 1959) upholding the constitutionality of similar state statutes, the Court rules that the passage of Louisiana Act 275 3(5) of 1962 was within the power reserved to the states under 12 U.S.C. Section 1846, the Federal Bank Holding Company Act.

The Court finds §1842(d) of said act persuasive of the degree of control that the states may bring to bear in this area. This Section essentially provides that, before an out-of-state bank holding company may come into another state and acquire an interest in a bank of that state, the state must specifically authorize it by statute. The cases relied on by the Defendants in support of their contention that this statute is unconstitutional do not concern themselves with the question of the permissible limits of state regulation of

national bank holding companies and their subsidiaries under §1846.

The Court having upheld the constitutionality of Louisiana Act 275 in its application to Defendant making it unlawful for said Defendant to open in Louisiana, the Court deems it unnecessary to address itself to the cogent arguments put forth by counsel on the question of the applicability of 12 U.S.C. 36(c) as to whether, by its terms, it proscribes in these circumstances, the setting up of the type of bank herein involved and secondly, if not proscribed by the terms of the statute, whether this Court ought to look behind the corporate form of the new bank to determine whether or not it is in violation of Section 36(c).

Counsel for the Plaintiff, Bank of New Orleans and Trust Company will prepare and submit findings of fact, conclusions of law and order in conformity with the Court's ruling.

/signed/ CHARLES F. McLAUGHLIN,  
Judge.

November 5, 1962.

Filed November 23, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

INTERVENING DEFENDANT'S OBJECTIONS TO THE FORM OF  
PLAINTIFFS' PROPOSED ORDER FOR SUMMARY JUDGMENT AND  
JUDGMENT.

Comes now the intervening defendant, Whitney National Bank in Jefferson Parish, and objects to the form of plaintiffs' Proposed Order for Summary Judgment and Judgment, submitted herein on November 21, 1962, and requests this Court to amend said Proposed Order for Summary Judgment and Judgment in the following respects:

1. The last paragraph beginning on page 2 of said Proposed Order for Summary Judgment and Judgment should be revised to read as follows:



"Ordered, Adjudged and Decreed, that defendant, James J. Saxon, Comptroller of the Currency, his agents, servants, employees and attorneys, be and they hereby are permanently restrained and enjoined from issuing or delivering any Certificate of Authority, pursuant to 12 U.S.C. §27 or otherwise, to intervening defendant Whitney National Bank in Jefferson Parish, so long as Whitney National Bank in Jefferson Parish remains a bank holding company subsidiary within the meaning of Louisiana Act 275 of 1962, or to any persons or corporations in active concert or participation with said Whitney National Bank in Jefferson Parish, authorizing the opening and operation by them or any of them of a bank or banking facilities within the limits of Jefferson Parish, State of Louisiana, in violation of Louisiana Act 275 of 1962, and it is further . . . ."

2. The first full paragraph on page 3 of said Order for Summary Judgment and Judgment should be stricken.

/s/ BRICE M. CLAGETT,  
*Attorney for Intervening Defendant  
Whitney National Bank in  
Jefferson Parish*

November 23, 1962.

Filed November 23, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

MEMORANDUM IN SUPPORT OF INTERVENING DEFENDANT'S OB-  
JECTIONS TO THE FORM OF PLAINTIFFS' PROPOSED ORDER FOR  
SUMMARY JUDGMENT AND JUDGMENT.

1. The Injunction Provision Is Unjustifiably Broad and  
Must Be Amended To Conform to the Court's Deci-  
sion As Contained in Its Memorandum Opinion Filed  
November 5, 1962.

The proposed Order, as drafted by plaintiffs, would seem to prohibit the Comptroller from granting a certificate to Whitney National Bank in Jefferson Parish even in a situation in which the opening of that bank for business would be perfectly legal under Louisiana law. The proposed Order thus goes far beyond the decision of the Court, as stated in its Memorandum Opinion filed November 5, 1962, and must be revised to conform to that decision.

The Court has held that the Comptroller may not grant a certificate to commence a banking business to Whitney National Bank in Jefferson Parish on the ground that Whitney-Jefferson could not commence a banking business in Jefferson Parish, Louisiana, without violating Louisiana Act 275 of 1962. Section 3(5) of that statute provides that "no bank holding company or subsidiary thereof" may open for business any bank not already open for business on the effective date of the statute. Whitney-Jefferson is presently a bank holding company subsidiary within the meaning of Section 1(g) of the statute.

If, however, the ownership of Whitney-Jefferson changed so that it ceased to be a bank holding company subsidiary as that term is used in the Louisiana statute, the prohibition against its opening would no longer apply and so far as has been decided by this Court, Whitney-Jefferson would be free to open for business and the Comptroller would be free to issue his certificate. Any claim that Whitney-Jefferson

would still be prohibited from opening for business even after it ceased to be a bank holding company subsidiary would represent an attempt to extend the decision of this Court to matters which it has expressly refrained from deciding.

The proposed injunction paragraph, beginning at the bottom of page 2 of plaintiffs' proposed Order, is inconsistent with these obvious facts. Read literally, that paragraph would appear to enjoin the Comptroller from issuing his certificate to Whitney-Jefferson *even if Whitney-Jefferson ceased to be a bank holding company subsidiary*. Read, literally, therefore, this paragraph would seem to enjoin the Comptroller from chartering Whitney-Jefferson even if Whitney-Jefferson's ownership had changed so that its opening was no longer illegal under the Louisiana statute. The injunction paragraph is therefore indefensibly broad and inconsistent with the decision of the Court as contained in its Memorandum Opinion filed on November 5, 1963.

The defect can be cured by revising plaintiffs' Proposed Order and Judgment as shown in paragraph 1 of intervening defendant's Objections, filed herein on November 23, 1962. Intervening defendant's proposed revisions ensure that (1) the Comptroller is enjoined from issuing a certificate to Whitney-Jefferson so long as Whitney-Jefferson remains a bank holding company subsidiary within the meaning of the Louisiana statute, and (2) the Comptroller is enjoined from issuing a certificate to persons or corporations "in active concert or participation with" Whitney-Jefferson if the opening of a bank by them in Jefferson Parish would violate the Louisiana statute.

**2. Plaintiffs Are Not Entitled to the Cancellation of Their Bond, and Such Bond Should Be Retained To Secure Intervening Defendant Against Damages Incurred by It in the Event That It is Ultimately Determined That Plaintiffs Acted Wrongfully in Obtaining a Preliminary Injunction.**

The first full paragraph on page 3 of plaintiffs' Proposed Order for Summary Judgment and Judgment provides for cancellation of the \$50,000 bond filed herein by one of the plaintiffs, as principal, and Glens Falls Insurance Company, surety, on July 16, 1962. This provision of the proposed Order is unjustified and should be stricken.

Fed. R. Civ. P. 65(c), which provides for the giving of a bond by a party seeking a preliminary injunction, does not provide for its automatic or necessary cancellation in the event that a permanent injunction is subsequently granted. If it is determined on appeal that the preliminary injunction was wrongfully granted and that intervening defendant has suffered damage thereby, then intervening defendant would become entitled to collect on the bond to the extent of such damages. This was precisely the situation in *Houghton v. Meyer*, 208 U.S. 149 (1908), where the Supreme Court ruled in favor of the position here taken, and allowed a party which had lost at trial, but had won on appeal, to collect damages on a preliminary injunction bond.

The arguments for maintaining the bond in effect are unusually strong in the present case, where (1) substantial questions of law will be determined on appeal, and (2) the Louisiana statute which this Court has held determinative of the litigation had not even been enacted at the time the preliminary injunction (on which the bond was given) was entered.

Other authorities support the position here taken. "Until there has been a final determination of the suit in which the bond is given, it cannot be definitely ascertained as to whether or not there is or will be any liability on the bond." 14 R.C.L. 74-75. If a plaintiff obtains a preliminary injunction and gives security, and subsequently obtains a permanent injunction or other judgment, but judgment for the plaintiff is reversed on appeal, the defendant is entitled to collect on the bond. *Beech v. United States Fidelity & Guaranty Co.*, 30 P.2d 1079 (Idaho, 1934); *Williams v. Baker*, 13 Ohio C.C. 500, 92 A.L.R. 274 (1896).

The penultimate paragraph of plaintiffs' Proposed Order for Summary Judgment and Judgment should therefore be deleted.

Respectfully submitted,

S. BRICE M. CLAGETT,

Attorney for intervening defendant

Whitney National Bank in Jefferson Parish.

November 23, 1962.

Filed November 26, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

DEFENDANT COMPTROLLER'S OBJECTIONS TO FORM OF PROPOSED  
ORDER FOR SUMMARY JUDGMENT AND JUDGMENT AS SUB-  
MITTED BY PLAINTIFFS.

On November 21, 1962, plaintiffs submitted a proposed "Order for Summary Judgment and Judgment" for the Court's consideration in this case.

The defendant Comptroller objects to the form of the fifth paragraph of that proposed order (set forth at the bottom of page 2 and at the top of page 3 as submitted by plaintiffs), and proposes that said paragraph be amended to read as follows (new matter being underlined):

"Ordered, adjudged and decreed, that defendant, James J. Saxon, Comptroller of the Currency, his agents, servants, employees and attorneys, be and they hereby are permanently restrained and enjoined from issuing or delivering any Certificate of Authority, pursuant to 12 U.S.C. §27 or otherwise, to intervening defendant Whitney National Bank in Jefferson Parish, *so long as Whitney National Bank in Jefferson Parish remains a bank holding company subsidiary within the meaning of Louisiana Act 275 of 1962*, or to any persons or corporations in active concert or participation with said Whitney National Bank in Jefferson Parish, authorizing the opening and operation by them or any of them of a bank or banking facilities within the limits of Jefferson Parish, State of Louisiana, *in violation of Louisiana Act 275 of 1962*, and it is further

The defendant Comptroller takes no position with respect to inclusion or exclusion of the sixth paragraph of the proposed order (set forth as the first full paragraph on page 3 as submitted by plaintiffs), dealing with cancellation of the

injunction undertaking and discharge of the principal and surety from further liability thereon.

JOSEPH D. GUILFOYLE,  
*Acting Assistant Attorney General.*

DONALD B. MACGUINEAS,  
PAUL J. GROMBLY,

DAVID V. SEAMAN,  
*Attorneys, Department of Justice  
Attorneys for Defendant  
Comptroller of the Currency.*

*Of Counsel:*

DAVID C. ACHESON,  
*United States Attorney.*

Filed December 5, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF  
DECLARATORY JUDGMENT AND PERMANENT INJUNCTION.

This is an action by the Bank of New Orleans and Trust Company and Guaranty Bank and Trust Company, Lafayette, Louisiana against James J. Saxon, Comptroller of the Currency, seeking a Declaratory Judgment and an Injunction prohibiting the defendant from issuing to the Whitney National Bank in Jefferson Parish a Certificate of Authority to commence the business of banking in Jefferson Parish, Louisiana. A temporary restraining order was issued by this Court on June 27, 1962. Thereafter, the motion of the Whitney National Bank in Jefferson Parish to intervene as a defendant, which had been filed on June 19, 1962 was granted, and the Bank of Louisiana in New Orleans intervened as a plaintiff. On July 10, 1962, the Court issued a Preliminary Injunction against the defendant. J. W. Jean-sonne, Louisiana State Bank Commissioner, thereupon intervened as a plaintiff.

Motions and cross-motions for Summary Judgment by all parties and defendant Comptroller's motion to dismiss having come on for hearing on October 10, 1962, and the Court, having considered the pleadings herein, the statements of material facts submitted by the parties, the points and authorities submitted therewith, the affidavits submitted by the parties, and having heard oral arguments of counsel, and the Court, having concluded that there are no genuine issues of fact involved in this case requiring a trial on the merits and that plaintiffs' and intervening plaintiffs' cross-motions for summary judgment should be granted for the reasons set forth in the Court's Memorandum Decision, dated November 5, 1962, hereby makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT.

1. Plaintiffs, Bank of New Orleans and Trust Company and Guaranty Bank and Trust Company, Lafayette, Louisiana, and intervening plaintiff, Bank of Louisiana in New Orleans, are banking corporations organized and existing under the laws of the State of Louisiana. Plaintiffs, Bank of New Orleans and Trust Company and Bank of Louisiana in New Orleans, conduct their banking business within the Parish of Orleans, Louisiana. Plaintiff, Guaranty Bank and Trust Company of Lafayette, Louisiana conducts its banking business in the Parish of Lafayette, Louisiana.

2. J. W. Jeansonne, Louisiana State Bank Commissioner, intervening plaintiff, is the officer charged with the administration of the banking laws of the State of Louisiana, including Louisiana Act 275 of 1962.

3. Defendant, James J. Saxon, is the Comptroller of the Currency, an officer of the United States authorized by law to issue Certificates of Authority to national banking associations which are lawfully entitled to commence the business of banking.

4. Intervening defendant, Whitney National Bank in Jefferson Parish (Whitney-Jefferson), is a national banking association and a wholly owned subsidiary of Whitney Holding Corporation (Whitney Holding), a bank holding company incorporated under the laws of Louisiana.

5. Whitney National Bank of New Orleans (Whitney-New Orleans), not a party to this suit, is also a national banking



association and a wholly owned subsidiary of Whitney Holding.

6. Whitney-New Orleans, created approximately 79 years ago, is the largest bank in Louisiana and one of the largest financial institutions in the southern portion of the United States, and presently conducts its business only in Orleans Parish (a political subdivision coterminous with the City of New Orleans).

7. For a long period of years, Whitney-New Orleans has been desirous of expanding its banking operations into Jefferson Parish, Louisiana, a neighboring parish or county, but was prohibited by the operation of 12 U.S.C. §36(c) and Louisiana Revised Statutes, Title 6, §54, from establishing branch facilities outside of Orleans Parish. In an effort to accomplish its desired objective, Whitney-New Orleans decided to utilize the device of a bank holding company.

8. The management of Whitney-New Orleans thereupon obtained from the Comptroller of the Currency informal approval of its desire to expand banking operations into Jefferson Parish through the formation of a bank holding company and set into motion the following proposed steps designed to accomplish such purpose:

*First:* With \$350,000. of its funds, Whitney-New Orleans created Whitney Holding, and distributed the 5,600 shares it received in Whitney Holding to its stockholders.

*Second:* Whitney Holding invested the \$350,000. provided by Whitney New Orleans in a new national banking association, Crescent City National Bank, and received in return all of the shares of stock in Crescent City National Bank.

*Third:* Whitney New Orleans, Crescent City National Bank and Whitney Holding then entered into an agreement whereby Whitney-New Orleans was consolidated into Crescent City National Bank under the name Whitney New Orleans, and Whitney Holding became the owner of all of the shares in the consolidated banks and the stockholders of the original Whitney-New Orleans received the remainder of the stock in Whitney Holding.

*Fourth:* Whitney New Orleans then provided \$450,000. to Whitney Holding with which to purchase all of the stock in Whitney-Jefferson.

9. On October 3, 1961, defendant Comptroller gave preliminary approval to the formation of the Crescent City National Bank and the Whitney National Bank in Jefferson

Parish, Louisiana, subject to approval by the Federal Reserve Board of the application of Whitney Holding to become a bank holding company under the Bank Holding Company Act of 1956.

10. On May 3, 1962, the Federal Reserve Board approved the application of Whitney Holding.

11. Subsequently, defendant Comptroller then approved the consolidation of the existing Whitney-New Orleans into the Crescent City National Bank under the original name of Whitney-New Orleans, and this was accomplished.

12. Whitney Holding thereupon purchased all of the stock of Whitney-Jefferson for \$650,000., by which time the Articles of Association and the Certificate of Organization of Whitney-Jefferson had been executed and filed with defendant Comptroller.

13. On June 9, 1962; before defendant Comptroller could issue a Certificate of Authority authorizing Whitney-Jefferson to commence the business of banking in Jefferson Parish, Louisiana, this suit was instituted.

14. Defendant Comptroller voluntarily withheld issuance of a Certificate of Authority until June 27, 1962, when a temporary restraining order was issued by this Court. After hearing, a preliminary injunction was ordered granted on July 6, 1962, and was signed and filed on July 10, 1962.

15. On the same date, July 10, 1962, Louisiana Act 275 of 1962 became effective as the law of Louisiana. Section 3(5) of said Act provides:

"It shall be unlawful . . . (5) for any bank holding company or subsidiary thereof to open for business any bank not now opened for business, whether or not a charter, permit, license or certificate to open for business has already been issued."

16. Plaintiffs and intervening plaintiffs contend that Act 275 of 1962 is clearly applicable to Whitney-Jefferson; was enacted pursuant to the power reserved to the states under 12 U.S.C. §1846 (the Federal Bank Holding Company Act); and that defendant Comptroller may not issue a Certificate of Authority to a wholly owned subsidiary of a bank holding company in contravention of this statute. Defendant and intervening defendant, on the other hand, contend that Section 3(5) of Act 275 of 1962 is inapplicable to Whitney-Jefferson; but that, should the Court determine that such

section be applicable to Whitney-Jefferson, then it is unconstitutional in that it collides with the Supremacy Clause of the Constitution, in that said Section 3(5) of the Louisiana statute exceeds the power reserved to the states in the Federal Bank Holding Company Act.

17. Plaintiffs and intervening plaintiffs urge the alternative contention that, apart from the above statute, the issuance by defendant Comptroller of the Certificate of Authority to Whitney-Jefferson would also be in contravention of Section 36(c) of the National Banking Act, 12 U.S.C. §36(c) in combination with Louisiana R.S. 6:54, which makes it unlawful for Whitney-New Orleans to open a "branch" in Jefferson Parish, and plaintiffs and intervening plaintiffs ask the Court to arrive at this determination by "piercing the corporate veil" of the holding company form used. Defendant and intervening defendant, on the other hand, argue that Whitney-Jefferson is not a "branch" bank and therefore does not come within the prescription of Section 36(c) of the National Banking Act, but is, on the contrary, a separate entity which has been organized and established and will operate differently than a branch of Whitney-New Orleans.

18. Plaintiffs and intervening plaintiffs have presented sworn, uncontroverted facts to show that, if defendant Comptroller is not prohibited from issuing his Certificate of Authority to Whitney-Jefferson, each plaintiff bank will sustain irreparable injury and damage in excess of \$10,000, exclusive of interest and costs.

#### CONCLUSIONS OF LAW

1. The Court has jurisdiction over this action under 28 U.S.C. §1331, and under the provisions of Sections 11-305, 306 of the District of Columbia Code, and is empowered to render a declaratory judgment herein under the provisions of 28 U.S.C. §2201.

2. Defendant Comptroller of the Currency has no discretion to issue a Certificate of Authority to a national banking association to commence a banking business in a manner prohibited by law (*Commercial State Bank v. Gidney*, 174 F. Supp. 770, 778, aff'd, 278 F. 2d 871 (D.C. App. 1960); *Camden Trust Co. v. Gidney*, 301 F. 2d 521 (D.C. App.), cert. denied, 369 U.S. 886 (1962); *Wayne Oakland Bank v. Gidney*, 252 F. 2d 537 (C.C.A. 6), cert. denied 358 U.S. 830 (1958)).

3. The Federal Bank Holding Company Act, at 12 U.S.C. §1846, reserved to the States such powers and jurisdiction as they had or might exercise in the future with respect to banks, bank holding companies and subsidiaries of bank holding companies, and Section 3(5) of Louisiana Act 275 of 1962 was enacted pursuant to and within the scope of the said powers and jurisdiction so reserved to the States by Congress, and said statute is constitutional (*Bracburn Securities Corp. v. Smith*, 153 N.E. 2d 806, appeal dismissed for want of a substantial Federal question, 359 U.S. 311 (1959); *Opinion of the Justices*, 151 A. 2d 236 (N.H., 1959); also 12 U.S.C. §1842(d), *Federal Bank Holding Company Act*)).

4. Act 275 of 1962 is directly applicable to intervening defendant, Whitney National Bank in Jefferson Parish, a wholly owned subsidiary of a Louisiana-incorporated bank holding company, and said statute makes it unlawful for said intervening defendant to commence the business of banking in Louisiana. Accordingly, defendant Comptroller of the Currency should be permanently enjoined and restrained from issuing a Certificate of Authority licensing Whitney-Jefferson to commence such unlawful operations (*Commercial State Bank v. Gidney*, *supra*; *Wayne Oakland Bank v. Gidney*, *supra*).

5. Plaintiff and intervening plaintiff banks, faced with proposed invasion of property rights and injury from the proposed unlawful issuance by defendant Comptroller of a Certificate of Authority to intervening defendant Whitney-Jefferson, have standing to bring this suit, and they have no other adequate remedy at law (*Wisconsin Bankers Association v. Robertson*, 190 F. Supp. 90, 94, *aff'd*, 294 F. 2d 714 (App. D.C.), *cert. denied* 368 U.S. 938, rehearing denied 368 U.S. 979 (1961); *Commercial State Bank v. Gidney*, *supra*; *Wayne Oakland Bank v. Gidney*, *supra*).

6. The Court, having upheld the constitutionality of Louisiana Act 275 of 1962 in its application to intervening defendant making it unlawful for said defendant to open for business in Louisiana, it is unnecessary for the Court to address itself to the other contentions of the parties on the question of the applicability of 12 U.S.C. 36(c), and as to whether, by its terms, it proscribes in these circumstances, the setting up of the type of bank here involved, and secondly, if not proscribed by the terms of the statute, whether this Court ought to look behind the corporate form of

Whitney-Jefferson to determine whether or not it is in violation of Section 36(c).

7. The cross motions for summary judgment of plaintiffs and intervening plaintiff should be and are granted; and the motions for summary judgment of the defendant and intervening defendant and the cross motion to dismiss by defendant Comptroller should be, and are, denied.

Done this 5 day of December, 1962.

s. CHARLES F. McLAUGHLIN, .  
Judge.

Filed December 5, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

ORDER

This cause came on to be heard on motions of the defendant and intervening defendant for summary judgment and cross-motions of plaintiffs and intervening plaintiffs for summary judgment, all filed pursuant to Rule 56 of the Federal Rules of Civil Procedure, and upon defendant's motion to dismiss, and the Court having considered the pleadings, the affidavits submitted in support of the motions and cross-motions, the statements of material facts submitted by the parties pursuant to Local Rule 9(h), and having heard oral arguments of counsel, and the Court, having concluded there are no genuine issues of fact involved in this case requiring a trial on the merits, and, it appearing to the Court after due deliberation that the plaintiffs' and intervening plaintiffs' cross-motions for summary judgment should be granted for the reasons set forth in the Court's Memorandum Opinion, dated November 5, 1962, and that it would be unlawful for defendant Comptroller of the Currency to issue a Certificate of Authority authorizing intervening defendant Whitney National Bank in Jefferson Parish to open and operate proposed banking facilities in Jefferson Parish, State of Louisiana to the irreparable injury and damage of the

plaintiffs and intervening plaintiffs herein, and that defendant should be permanently enjoined from so doing, and the Court having made and filed its findings of fact and conclusions of law, it is this — day of December, 1962:

Ordered, That defendant's and intervening defendant's motions for summary judgment and defendant's motion to dismiss be, and the same hereby, are denied, and it is further

Ordered, That plaintiffs' and intervening plaintiffs' cross-motions for summary judgment be, and the same hereby, are granted, and it is further

Ordered, Declared, Adjudged and Decreed, That defendant Comptroller of the Currency has no discretion to and may not issue a Certificate of Authority to intervening defendant Whitney National Bank in Jefferson Parish licensing and authorizing said intervening defendant to open and operate a banking business in Jefferson Parish, State of Louisiana, in violation of Louisiana Act 275 of 1962, the enactment of which by the State of Louisiana was authorized by the Federal Bank Holding Company Act, 12 U.S.C. §1846, and it is further

Ordered, Adjudged and Decreed, That defendant, James J. Saxon, Comptroller of the Currency, his agents, servants, employees and attorneys, be and they hereby are permanently restrained and enjoined from issuing or delivering any Certificate of Authority, pursuant to 12 U.S.C. §27 or otherwise, to intervening defendant Whitney National Bank in Jefferson Parish as a bank holding company subsidiary within the meaning of Louisiana Act 275 of 1962, or to any persons or corporations in active concert or participation with said Whitney National Bank in Jefferson Parish, authorizing the opening and operation by them or any of them of a bank or banking facilities within the limits of Jefferson Parish, State of Louisiana in violation of Louisiana Act 275 of 1962, and it is further

Ordered, Adjudged and Decreed, That the injunction undertaking in the sum of \$50,000, filed herein on July 16, 1962, in support of the preliminary injunction by plaintiff, Bank of New Orleans and Trust Company, principal, and Glens Falls Insurance Company, surety, be and the same hereby is cancelled and said principal and surety on such bond be and the same hereby are discharged of any further liability thereon, and it is further

Ordered, Adjudged and Decreed, That plaintiffs and in-

tervening plaintiffs shall have and recover their costs from the intervening defendant herein.

/s/ CHARLES F. McLAUGHLIN,  
Judge.

Filed January 31, 1963

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

NOTICE OF APPEAL

Notice is hereby given that Whitney National Bank in Jefferson Parish, the intervening defendant above named, hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the order entered in this action on December 5, 1962, denying defendant's and intervening defendant's motions for summary judgment and defendant's motion to dismiss, granting plaintiff's and intervening plaintiff's cross-motions for summary judgment, ordering that defendant Comptroller of the Currency may not issue a certificate of authority to intervening defendant, permanently enjoining such issuance, discharging an undertaking and awarding costs.

/s/ W. GRAHAM CLAYTOR, JR.  
*Attorney for Appellant  
Whitney National Bank in  
Jefferson Parish  
701 Union Trust Building  
Washington 5, D. C.*

January 31, 1963.



Filed February 1, 1963

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil No. 1857-62

BANK OF NEW ORLEANS, *Plaintiff.*

vs.

JAMES J. SAXON, Comptroller of the Currency, *Defendant.*

NOTICE OF APPEAL

Notice is hereby given this 1st day of February, 1963, that defendant, James J. Saxon, Comptroller of the Currency, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 5th day of December, 1962, in favor of plaintiff against said defendant, James J. Saxon.

s DAVID C. ACHESON,  
*United States Attorney.*

Copy to: Edward L. Merrigan, Esquire,  
425 13th Street, N.W.,  
Washington, D. C.  
*Attorney for Plaintiff.*

(6468-3)

454 In United States Court of Appeals for the District of  
Columbia Circuit

[File endorsement omitted]

No. 17672

WHITNEY NATIONAL BANK IN JEFFERSON PARISH, APPELLANT

v.

BANK OF NEW ORLEANS AND TRUST COMPANY, ET AL.,  
APPELLEES

No. 17681

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY, APPELLANT

v.

BANK OF NEW ORLEANS AND TRUST COMPANY, ET AL.,  
APPELLEES

*Appeals from the United States District Court for the District  
of Columbia*

Decided August 14, 1963

455 Mr. Dean Acheson, with whom Messrs. W. Graham  
Claytor, Jr., and Brice M. Claggett were on the brief,  
for appellant in No. 17672.

Mr. David L. Rose, Attorney, Department of Justice, with  
whom Messrs. David C. Acheson, United States Attorney, and  
Joseph D. Guilfoyle, Director of Operations, Civil Division,  
Department of Justice, and Morton Hollander, Attorney, De-  
partment of Justice, were on the brief, for appellant in No.  
17,681.

Mr. Edward L. Merrigan for appellee Bank of New Orleans  
and Trust Company and certain other appellees.

Mr. Bentley G. Byrnes, with whom Mr. Edward L. Merrigan  
was on the brief, for appellee Louisiana State Bank Commis-  
sioner.

Mr. James F. Bell filed a brief on behalf of the National  
Association of Supervisors of State Banks, as *amicus curiae*,  
urging affirmance.

Before WILBUR K. MILLER, WASHINGTON AND DANAHER,  
*Circuit Judges.*

WILBUR K. MILLER, Circuit Judge: The City of New Orleans, Louisiana, is conterminous with the Parish of Orleans in which it is located. It is south of and adjacent to that part of Jefferson Parish which lies east of the Mississippi River. The latter is a populous area, already commercially and industrially active, in which further development is expected to be rapid and extensive.

The Whitney National Bank of New Orleans, by far the largest bank in Louisiana, with its main office and numerous branches in Orleans Parish, draws a substantial volume of business from customers in east Jefferson Parish. For some time it has desired to extend its operations into that area, but cannot establish branches therein because a Louisiana  
456 statute,<sup>1</sup> which is construed as forbidding such expansion by state banks, is made applicable to national banks in Louisiana by a federal statute.<sup>2</sup>

After several years of studying alternate methods of doing indirectly what these statutes prohibited it from doing directly, The Whitney National Bank of New Orleans finally decided upon a corporate reorganization, the details of which included  
457 the formation of a holding company to own two new national banks: Crescent City National Bank, a mere conduit to exist temporarily in name only, and Whitney National Bank in Jefferson Parish, to be operated as we shall describe. All three new organizations were to be financed with funds furnished by Whitney of New Orleans.

<sup>1</sup> 21 SA-R.S. 6:54 (1951).

<sup>2</sup> Title 12 U.S.C. § 36 provides in pertinent part:

"Branch Banks.

"The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

"(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within

Through elaborate maneuvers which will be explained later, the result would be that Whitney Holding Corporation would own all the stock, except qualifying shares, of Whitney of New Orleans and Whitney in Jefferson Parish; and the shares of Whitney Holding Corporation would be owned by the shareholders of the original Whitney of New Orleans in the same proportion as before. The holding company feature of the plan required the approval of the Board of Governors of the Federal Reserve System, and the remainder of it required the approval of the Comptroller of the Currency.

Commenting on the proposed plan Whitney's president on October 28, 1961, advised his shareholders it had been decided to use the holding company device instead of the "affiliated" bank plan which we approved in the *Camden Trust* case<sup>1</sup> largely because, under the latter arrangement, it is impossible to attain and preserve identity of ownership of the two banks. He said:

"... From the depositors [sic] point of view, those in the smaller bank will be assured of the same management which directs the larger one without possibility of interruption. They will be assured of access to the large loan limits of the combined banks. They will have the security which arises out of the fact that the large and

the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. . . .

"(c) No branch of any national banking association shall be established . . . without first obtaining the consent and approval of the Comptroller of the Currency.

"(f) The term 'branch' as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State . . . at which deposits are received, or checks paid, or money lent." [Emphasis supplied.]

<sup>1</sup>*Camden Trust Company v. Gidney*, 112 U.S. App. D.C. 197, 301 F. (2d) 521, cert. denied 369 U.S. 886 (1962).

the small bank have identical ownership as well as management.

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"We . . . elected to use a holding company rather than to get a group of stockholders to form an affiliate in Jefferson Parish. An affiliate by law must depend on ownership of a majority of the stock in the Jefferson Parish bank by Whitney Bank stockholders. Affiliate relationship can be suddenly terminated if stock ownership in the Jefferson Parish bank changes over a period of time until control ceases to be in the stockholders of the large New Orleans bank. This large bank cannot control those changes in stock ownership, and under the law when the control ceases to be in the stockholders of the large bank the two banks cannot have common officers or directors. As we view it, the change of ownership of the stock could be very embarrassing to either or both banks,—even to the extent of having a bank which we no longer control still bearing the name 'Whitney National Bank.'

"Under the holding company approach the relationship is completely owned by the stockholders of the holding company who will be all the present stockholders of the Whitney National Bank and their successors.

"By reason of the common ownership of the two banks in a holding company there can arise no conflict of interest between them as there can between affiliated banks. There will be no minority stockholders to be affected.

"From the customer point of view there will be no conflict of interest arising out of the manner in which the customer sees fit to divide his business between the commonly owned banks in the two parishes. He will have the full benefit of a relationship with the large bank and its officers.

"Because of the permanent relationship between the large and the smaller bank, the smaller one can operate safely with a small capitalization."

This plan was carried out almost completely. Whitney of New Orleans organized the Whitney Holding Corporation with \$350,000 initial capital furnished by it, with which Whitney Holding acquired the "phantom" Crescent City National Bank. The Whitney Bank then by consolidation transferred its assets to Crescent City National Bank (owned by Whitney Holding) and immediately changed Crescent City's name to The Whitney National Bank of New Orleans. Then the new Whitney of New Orleans furnished the Holding Corporation with \$650,000<sup>5</sup> with which the latter organized The Whitney National Bank in Jefferson Parish. And all the Holding Corporation's capital stock was distributed proportionately to the stockholders of the original Whitney of New Orleans.

All this was done with the approval of the Board of Governors of the Federal Reserve System (which had the duty of passing on the validity of the holding company arrangement) and of the Comptroller of the Currency. The only step not yet taken is the Comptroller's issuance to The Whitney National Bank in Jefferson Parish of a Certificate of Authority which will enable it to begin business.

On June 9, 1962, three Louisiana state banks<sup>6</sup> filed this suit against the Comptroller of the Currency, James J. Saxon, in the United States District Court for the District of Columbia. Their complaint, after describing Whitney's plan of reorganization and the various steps already taken pursuant to it, alleged that the Comptroller

<sup>5</sup>This payment was described as a dividend.

<sup>6</sup>It was so characterized by the Federal Reserve Board of Governors. Crescent City never opened for business and was not intended to do so.

<sup>7</sup>Bank of New Orleans and Trust Company, located in Orleans Parish, Merchants Trust and Savings Bank, located in the eastern portion of Jefferson Parish, and Guaranty Bank and Trust Company, located in Lafayette Parish.

On June 26, 1962, Merchants Trust and Savings Bank moved, in its own behalf only, to dismiss the action and so withdrew as a party plaintiff. The Bank of Louisiana in New Orleans was allowed to intervene as a plaintiff on July 5, and on July 10 intervention of Whitney of Jefferson Parish as a defendant was permitted. On September 7, 1962, the State Bank Commissioner was allowed to intervene as a plaintiff. The District Court on September 26, 1962, granted the motion of National Association of Supervisors of State Banks for permission to appear as *amicus curiae*.

"(19.) . . . is presently considering almost immediate issuance of his Certificate or Certificates of Authority which will enable the new branch bank facility to open and commence to operate a banking business at one or more locations in Jefferson Parish under the name of Whitney National Bank of Jefferson Parish.

"(20.) Plaintiffs verily believe that defendant, unless enjoined, will, without any notice of intention to plaintiffs, issue in the name of Whitney National Bank of New Orleans, or Whitney Holding Corporation, or Whitney National Bank of Jefferson Parish the aforesaid Certificate or Certificates of Authority, all in contravention of the letter, intent and purposes of Title 12 U.S.C. §§ 27, 36 and 1841, *et seq.*, and that after said Certificate or Certificates are issued as aforesaid, plaintiffs will have no adequate remedy at law, either to compel revocation of same or to prevent the Whitney Bank from so operating in Jefferson Parish.

"(21.) Plaintiffs further allege that the unlawful and arbitrary issuance by defendant of his certificate or certificates, authorizing the Whitney National Bank to open and operate a new branch facility or facilities in Jefferson Parish as aforesaid will cause great and irreparable damage to the banking business of said plaintiffs . . . ."

The relief prayed for was a declaration that 12 U.S.C. §§ 27, 36 and 1841, *et seq.*, prohibit the Comptroller from issuing a Certificate of Authority to the newly-organized Whitney-Jefferson bank, and that he be preliminarily and permanently enjoined.

" . . . from issuing to the Whitney National Bank, also known by the name of Crescent City National Bank, the Whitney Holding Corporation and/or the Whitney National Bank of Jefferson Parish, a Certificate or Certificates of Authority authorizing the establishment of new branch bank facilities by them or any of them in the name of Whitney National Bank or otherwise in Jefferson Parish, State of Louisiana . . . ."



After the complaint was filed, the Comptroller at first voluntarily withheld issuance of a Certificate of Authority to Whitney-Jefferson, but later indicated he would do so no longer. As a consequence, the plaintiffs moved for a temporary restraining order which was issued by District Judge Hart June 27, 1962; and on July 10, 1962, District Judge Holtzoff entered a preliminary injunction in accordance with the prayer of the complaint.

Meanwhile the Louisiana legislature of 1962 adopted a State Bank Holding Company Act, being Act 275,<sup>1</sup> which the Governor designated as emergency legislation so that it became effective July 10, 1962. Section 3(5) of that Act (6:1003(5)) is in pertinent part as follows:

"It shall be unlawful:

...  
 "(5) for any bank holding company or subsidiary thereof to open for business any bank not now opened for business, whether or not, a charter, permit, license or certificate to open for business has already been issued. . . ."

Admittedly, this measure was passed to prohibit the opening of Whitney-Jefferson.

Numerous pleadings, affidavits and other documents were filed by the various parties, including the opinion of the Board of Governors of the Federal Reserve System approving Whitney Holding Corporation's acquisition of the Whitney National Bank of New Orleans, as reorganized, and Whitney National Bank in Jefferson Parish, and Governor Robertson's dissent from that action.

462 Cross motions for summary judgment, the Comptroller's motion to dismiss, and the plaintiffs' motion for a permanent injunction came on for hearing before District Judge McLaughlin on October 10, 1962. He filed a memorandum opinion holding that Louisiana Act 275, § 3(5) makes it unlawful for Whitney-Jefferson to commence business, and that the Comptroller should be enjoined from issuing to it a Certificate of Authority to open its doors. Having so concluded,

<sup>1</sup> Now codified as 2 LSA-R.S. 6:1001-1006 (1962 Supp.).

Judge McLaughlin deemed it unnecessary to consider whether the establishment of Whitney-Jefferson violated 12 U.S.C. § 36(c). His opinion is reported in 211 F. Supp. 576 (1962).

Findings of fact and conclusions of law were filed by Judge McLaughlin December 5, 1962. The findings include the following:

"4. Intervening defendant, Whitney National Bank in Jefferson Parish (Whitney-Jefferson), is a national banking association and a wholly owned subsidiary of Whitney Holding Corporation (Whitney Holding), a bank holding company incorporated under the laws of Louisiana.

"5. Whitney National Bank of New Orleans (Whitney-New Orleans), not a party to this suit, is also a national banking association and a wholly owned subsidiary of Whitney Holding.

"6. Whitney-New Orleans, created approximately 79 years ago, is the largest bank in Louisiana and one of the largest financial institutions in the southern portion of the United States, and presently conducts its business only in Orleans Parish (a political subdivision coterminous [sic] with the City of New Orleans).

"7. For a long period of years, Whitney-New Orleans has been desirous of expanding its banking operations into Jefferson Parish, Louisiana, a neighboring parish or county, but was prohibited by the operation of 12 U.S.C. § 36(c) and Louisiana Revised Statutes, Title 6, § 54, from establishing branch facilities outside of Orleans

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Parish. In an effort to accomplish its desired objective Whitney-New Orleans decided to utilize the device of a bank holding company.

"8. The management of Whitney-New Orleans thereupon obtained from the Comptroller of the Currency informal approval of its desire to expand banking operations into Jefferson Parish through the formation of a bank holding company and set into motion the following proposed steps designed to accomplish such purpose:

"First: With \$350,000. of its funds, Whitney-New

Orleans created Whitney Holding, and distributed the 5,600 shares it received in Whitney Holding to its stockholders.

"Second: Whitney Holding invested the \$350,000. provided by Whitney-New Orleans in a new national banking association, Crescent City National Bank, and received in return all of the shares of stock in Crescent City National Bank.

"Third: Whitney-New Orleans, Crescent City National Bank and Whitney Holding then entered into an agreement whereby Whitney-New Orleans was consolidated into Crescent City National Bank under the name Whitney-New Orleans, and Whitney Holding became the owner of all of the shares in the consolidated banks and the stockholders of the original Whitney-New Orleans received the remainder of the stock in Whitney Holding.

"Fourth: Whitney-New Orleans then provided \$650,000. to Whitney Holding with which to purchase all of the stock in Whitney-Jefferson.

"9. On October 3, 1961, defendant Comptroller gave preliminary approval to the formation of the Crescent City National Bank and the Whitney National Bank in Jefferson Parish, Louisiana, subject to approval by the Federal Reserve Board of the application of Whitney Holding to become a bank holding company under the Bank Holding Company Act of 1956.

"10. On May 3, 1962, the Federal Reserve Board approved the application of Whitney Holding.

"11. Subsequently, defendant Comptroller then approved the consolidation of the existing Whitney-New Orleans into the Crescent City National Bank under the original name of Whitney-New Orleans, and this was accomplished.

"12. Whitney Holding thereupon purchased all of the stock of Whitney-Jefferson for \$650,000. by which time the Articles of Association and the Certificate of Organization of Whitney-Jefferson had been executed and filed with defendant Comptroller.

"13. On June 9, 1962, before defendant Comptroller could issue a Certificate of Authority authorizing Whitney-Jefferson to commence the business of banking in Jefferson Parish, Louisiana, this suit was instituted.

"14. Defendant Comptroller voluntarily withheld issuance of a Certificate of Authority until June 27, 1962, when a temporary restraining order was issued by this Court. After hearing, a preliminary injunction was ordered granted on July 6, 1962, and was signed and filed on July 10, 1962.

"15. On the same date, July 10, 1962, Louisiana Act 275 of 1962 became effective as the law of Louisiana. Section 3(5) of said Act provides:

"It shall be unlawful . . . (5) for any bank holding company or subsidiary thereof to open for business any bank not now opened for business, whether or not a charter, permit, license or certificate to open for business has already been issued.

"18. Plaintiffs and intervening plaintiffs have presented sworn, uncontroverted facts to show that, if defendant Comptroller is not prohibited from issuing his Certificate of Authority to Whitney-Jefferson, each plaintiff bank will sustain irreparable injury and damage in excess of \$10,000, exclusive of interest and costs."

Among the court's conclusions of law are the following:

"2. Defendant Comptroller of the Currency has no discretion to issue a Certificate of Authority to a national banking association to commence a banking business in a manner prohibited by law (*Commercial State Bank v. Gidney*, 174 F. Supp. 770, 778, *affd.* 278 F. 2d 871 (D.C. App. 1960); *Camden Trust Co. v. Gidney*, 301 F. 2d 521 (D.C. App.), *cert. denied*, 369 U.S. 886 (1962); *Wayne Oakland Bank v. Gidney*, 252 F. 2d 537 (C.C.A. 6), *cert. denied* 358 (U.S. 830 (1958)).

"3. The Federal Bank Holding Company Act, at 12 U.S.C. § 1846, reserved to the States such powers and

jurisdiction as they had or might exercise in the future with respect to banks, bank holding companies and subsidiaries of bank holding companies, and Section 3(5) of Louisiana Act 275 of 1962 was enacted pursuant to and within the scope of the said powers and jurisdiction so reserved to the States by Congress, and said statute is constitutional (*Braeburn Securities Corp. v. Smith*, 153 N.E. 2d 806, appeal dismissed for want of a substantial Federal question, 359 U.S. 311 (1959); *Opinion of the Justices*, 151 A. 2d 236 (N.H., 1959); also 12 U.S.C. § 1842(d), *Federal Bank Holding Company Act*).

"4. Act 275 of 1962 is directly applicable to intervening defendant, Whitney National Bank in Jefferson Parish, a wholly owned subsidiary of a Louisiana-incorporated bank holding company, and said statute makes it unlawful for said intervening defendant to commence the business of banking in Louisiana. Accordingly, defendant Comptroller of the Currency should be permanently enjoined and restrained from issuing a Certificate of Authority licensing Whitney-Jefferson to commence such unlawful operations (*Commercial State Bank v. Gidney, supra*; *Wayne Oakland Bank v. Gidney, supra*).

"5. Plaintiff and intervening plaintiff banks, faced with proposed invasion of property rights and injury from the proposed unlawful issuance by defendant Comptroller of a Certificate of Authority to intervening defendant Whitney-Jefferson, have standing to bring this suit, and they have no other adequate remedy at law (*Wisconsin Bankers Association v. Robertson*, 190 F. Supp. 90, 94, affd. 294 F. 2d 714 (App. D.C.), cert. denied 368 U.S. 938, rehearing denied 368 U.S. 979 (1961); *Commercial State Bank v. Gidney, supra*; *Wayne Oakland Bank v. Gidney, supra*).

"7. The cross motions for summary judgment of plaintiffs and intervening plaintiff should be and are granted; and the motions for summary judgment of the defendant and intervening defendant and the cross motion to

dismiss by defendant Comptroller should be, and are, denied."

Judgment was entered in accordance with the conclusions. Whitney-Jefferson filed notice of appeal therefrom on January 31, 1963, and the Comptroller's notice of appeal was filed February 1, 1963. That explains why there are two separately styled, and numbered proceedings in this court in what is in reality a single appeal.

In the brief for the Comptroller it is argued vigorously and at some length that the appellees have no standing to challenge his administrative determination to issue a Certificate of Authority to Whitney-Jefferson.<sup>8</sup> The only purpose of the state banks in filing this suit, says his brief, is to avoid the lessening of business and profits which might result from the presence of a new competing institution in the area; but, he continues, possible economic disadvantage from competition is not enough, absent a special Congressional grant of standing, to permit the disadvantaged party to invoke the jurisdiction of the courts.

We were told by his counsel on oral argument, however, that the Comptroller had instructed him not to press the lack of standing argument, as he desired a ruling on the merits. If we could accept the Comptroller's offer to waive the point  
467 concerning standing, this opinion would be substantially shortened, as the discussion of the merits, when reached, will not detain us long. The point cannot be thus waived by the Comptroller because it is jurisdictional: if the appellees lack standing to sue, their complaint should have been dismissed on that ground. Jurisdiction cannot be conferred by waiver; it is a threshold question which must be examined.

The Comptroller's brief contends that "appellees can point to no legal or actionable wrong to them arising from the opening of a new national bank." It is, of course, true, as held in *Alabama Power Co. v. Ickes*, 302 U.S. 464 (1938), that one who has no contractual or statutory right to be free of competition, and no property right which would be infringed thereby, has no standing to challenge federal administrative action which

<sup>8</sup> It is interesting to observe that the other appellant, Whitney-Jefferson, does not argue or even suggest that the state banks lack standing to sue.



simply increases the amount or effectiveness of competition. And we held in *Union Nat. Bank of Clarksburg v. Home Loan Bank Bd.*, 98 U.S. App D.C. 204, 233 F. (2d) 695 (1956), that, in the circumstances of that case, existing banks had no standing to challenge the Home Loan Bank Board's issuance of a charter to a proposed savings and loan association. In that case, the complaining banks were relying on a provision of the Home Owners Loan Act that

"No charter shall be granted . . . unless in the judgment of the Board a necessity exists for such an institution in the community to be served . . . nor unless the same can be established without undue injury to properly conducted existing local thrift and home-financing institutions."

We held that the complaining banks were not "local thrift and home-financing institutions" and so were not protected by the statute from the competition of a lawfully-established federal savings and loan association.

These and similar cases do not apply here because the applicable statutes and the facts of this case are different.<sup>9</sup>

468 For instance, the appellees, Bank of New Orleans and

Trust Company and Bank of Louisiana in New Orleans, are state banks having their principal and branch offices in Orleans Parish. They derive substantial volumes of business from the contiguous "east bank" portion of Jefferson Parish but are prohibited by Louisiana law from establishing branches there or in any parish other than Orleans.

They allege that Whitney, with its main office in Orleans Parish but also with substantial business from east Jefferson Parish, is subject to the same restriction as to the establishment of outside branches because 12 U.S.C. § 36(c) makes the Louisiana statute applicable to national banks. The state banks say that thus they have a right, under the combination of federal and state statutes, to be free of the competition in east Jefferson Parish which would result if Whitney of Orleans Parish

<sup>9</sup>Our decision in *Kansas City Power & Light Co. v. McKay*, 96 U.S. App. D.C. 273, 225 F. (2d) 924, cert. denied 350 U.S. 884 (1955), for example, involved federal competition sanctioned by Congress, while the competition here is private, and not so sanctioned.



is allowed to establish branches in east Jefferson where the state law forbids them to go. The state banks allege further that the Comptroller is not authorized to permit, but rather is prohibited by law from permitting, Whitney of New Orleans to establish branches in east Jefferson, and that his unlawful act in doing so would result in illegal competition and a consequent violation of their right, guaranteed by state and federal statutes, to be free of such competition.

The other appellee state bank is in nearby Lafayette Parish and has substantial business from east Jefferson which would be diminished by the unlawful competition of Whitney National's branches.

Clearly, then, under the allegations of their complaint, 469 the three state banks have standing. It is not enough to say *contra* that the Whitney-Jefferson bank will not be a branch of Whitney-New Orleans and that, therefore, the state banks have no legal right to protection against its establishment and consequently no standing to sue. For, whether or not Whitney-Jefferson will in legal effect be a branch of Whitney-New Orleans is the question tendered for adjudication, upon which under the circumstances the question of standing in part depends. If it is determined that Whitney-Jefferson is not a branch, it might or might not follow that the state banks had no standing—a matter on which we need not pass; but if it is held to be tantamount to a branch purporting to have been federally authorized, their standing would be indubitable.

Nor is it an answer to say that the state banks may utilize the holding company device to enter east Jefferson Parish, just as Whitney-New Orleans is attempting to do. Regardless of whether Act 275 of the 1962 Louisiana legislature is a direct prohibition against the opening of the new Whitney-Jefferson, unquestionably it effectively prevents the appellee state banks from opening new banks in Jefferson Parish through the medium of holding companies or otherwise. So, the complaint is that the Comptroller has permitted Whitney-New Orleans to organize a new branch in east Jefferson through the use of a holding company device which Louisiana law forbids a state bank to employ, and is about to authorize its opening.

The distinction between this case and those cited by the Comptroller as to standing to sue was carefully drawn by the Supreme Court in *Alabama Power Co. v. Ickes*, *supra* at page 484 (one of his citations), when it said:

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"*Frost v. Corporation Commission*, 278 U.S. 515, relied upon by petitioner, presents an altogether different situation. Appellant there owned a cotton-ginning business in the city of Durant, Oklahoma, for the operation of which he had a license from the corporation commission. The law of Oklahoma provided that no gin should be operated without a license from the commission, which could be obtained only upon specified conditions. We held that such a license was a franchise constituting a property right within the protection of the Fourteenth Amendment; and that while the acquisition of the franchise did not preclude the state from making similar grants to others, *it was exclusive against an attempt to operate, a competing gin without a permit or under a void permit.* The Durant Cooperative Gin Company sought to obtain a permit from the commission which, for reasons stated in our opinion, we held would be void and a clear invasion of Frost's property rights. *We concluded that a legal right of Frost to be free from such competition would be invaded by one not having a valid franchise to compete, and sustained Frost's right to an injunction against the commission and the Durant company.* See *Corporation Commission v. Lowe*, 281 U.S. 431, 435. *The difference between the Frost case and this is fundamental; for the competition contemplated there was unlawful while that of the municipalities here is entirely lawful.*" [Emphasis supplied.]

Although the *Frost* case is not factually identical with this one, it is sufficiently similar to be dispositive of the question of standing. The charters of the appellee banks, granted by the State of Louisiana, are guarded by a combination of specifically applicable federal and state statutes. The appellee banks cannot complain of lawful competition from other lawfully chartered state or national banks because their own char-

ters are not exclusive licenses. But where, as here, the threatened competition arises from an allegedly illegal facility, the appellee state banks have standing to invoke the jurisdiction of a federal court to challenge the alleged unlawful federal administrative action which admittedly would result in irreparable injury to their property rights in their charters.

The Comptroller asserts he has discretion as to  
471 whether to issue a Certificate of Authority to a new national bank which cannot be judicially controlled. The same contention was made in *Commercial State Bank of Roseville v. Gidney*, 174 F. Supp. 770 (D.C.D.C. 1959), where two state banks within two and one-half miles of a proposed national bank branch sought to enjoin the then Comptroller from authorizing the unlawful competition which threatened them with immediate and irreparable injury. Uncontroverted affidavits showed that the town of Clinton, site of the proposed branch, could not itself support the new facility, which would therefore necessarily draw its business from the surrounding communities already served by the complaining state banks. District Judge Youngdahl brushed aside the Comptroller's discretion argument by saying, at page 778:

"Defendant argues that the approval or disapproval of branches of national banks is a matter clearly committed to the discretion of the Comptroller. But there is no discretion in the Comptroller to approve the establishment of a branch office at a location prohibited by law. . . . In the instant case, there is no desire to control the defendant's discretion. . . . But, as mentioned above, there is no discretion to unlawfully issue a certificate. . . ." [Emphasis added.]

We affirmed Judge Youngdahl's decision. 108 U.S. App. D.C. 37, 278 F. (2d) 871 (1960).

In the case of *National Bank of Detroit v. Wayne Oakland Bank*, 252 F. (2d) 537, cert. denied 358 U.S. 830 (1958), the Sixth Circuit said, at page 544:

" . . . The district court found, as a fact, that the competition resulting from the opening and operation of a branch by the National Bank of Detroit would

certainly cause inestimable damage to The Wayne Oakland Bank. Whether the rights of a party are infringed by unlawful action of an individual or by exertion of unauthorized federal administrative power, it is entitled to have such controversy adjudicated."

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Judge Tamm of our District Court held in *Wisconsin Bankers Association v. Robertson*, 190 F. Supp. 90 (1960), that national and state banks of Wisconsin collectively have the exclusive right to conduct the business of banking in that state, which gave them standing to challenge alleged competition in that business by federal savings and loan associations.<sup>10</sup>

In sum, we have no doubt that the three state banks<sup>11</sup> had standing to sue the Comptroller in this action in order to test the legality of his proposed action. This conclusion makes it unnecessary to decide whether the Louisiana State Bank Commissioner had standing to sue.

We turn to the question on the merits: whether the District Court was correct in permanently restraining and enjoining the Comptroller from issuing a Certificate of Authority to Whitney-Jefferson. If Whitney-Jefferson, in its organization, management and operation, would be to all intents and purposes a branch of Whitney-New Orleans forbidden by 12 U.S.C. § 36(c), the authority of the District Court to enjoin him from issuing a Certificate of Authority is quite clear.

Since Whitney-Jefferson clearly is not an affiliate, the question is whether the elaborate and ingenious scheme of reorganization devised by Whitney-New Orleans results in what is in reality the establishment of a branch of Whitney-New Orleans in east Jefferson Parish, in violation of federal law.

There was actually no pretense about the matter: Whitney of New Orleans frankly proposed to evade the statutes by establishing through the holding company arrangement  
473 an office in east Jefferson Parish which it would manage and control. Its president said on October 27, 1961, in

<sup>10</sup> We affirmed; no cross appeal was filed. 111 U.S. App. D.C. 85, 294 F. (2d) 714, cert. denied 368 U.S. 938 (1961), rehearing denied 368 U.S. 979 (1962).

<sup>11</sup> The District Court's finding of fact No. 18 showed their irreparable injury.

his communication to Whitney-New Orleans stockholders which explained in detail the plan of reorganization:

"The basic purpose of the program is to allow the Whitney organization in New Orleans to commence a Holding Company operation controlling a bank in East Jefferson Parish to protect Whitney's competitive position in that area into which many of Whitney's present customers have moved."

On October 28, 1961, he wrote to his stockholders:

"... From the depositors [sic] point of view, those in the smaller bank will be assured of the *same management* which directs the larger one without possibility of interruption. They will be assured of access to the large loan limits of *the combined banks*. They will have the security which arises out of the fact that *the large and the small bank have identical ownership as well as management*.

"From the customer point of view there will be no conflict of interest arising out of the manner in which the customer sees fit to divide his business between the commonly owned banks in the two parishes. *He will have the full benefits of a relationship with the large bank and its officers.*

"Because of *the permanent relationship* between the large and the smaller bank, the smaller one can operate safely with a smaller capitalization." [Emphasis supplied.]

This is a very good description of a branch banking operation, regardless of the fact that Whitney's president did not denominate it as such. The nature of the arrangement, and not the label applied to it, determines the character of the relationship between two banking institutions. In 12 U.S.C. § 36 Congress gave a broad meaning to the word "branch":

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"(f) The term 'branch' as used in this section shall be held to include *any branch bank, branch office, branch agency, additional office, or any branch place of business* located in any state . . . at which de-

posits are received, or checks paid, or money lent."  
[Emphasis supplied.]

The Board of Governors of the Federal Reserve System, although it approved the application of Whitney Holding Corporation to acquire the capital stock of Whitney-New Orleans and Whitney-Jefferson, was under no illusion as to the true nature of the transaction. It said:

"Under the law of Louisiana, a bank may not establish branches outside of the parish in which its head office is situated. . . .

*" . . . The stated purpose of the proposed holding company system is to enable an organization centered about Whitney New Orleans to provide banking services not only through its existing 12 offices within the City of New Orleans but also through offices in the East Bank of Jefferson Parish. The holding company system will be under the direction of the present executive management of Whitney New Orleans; in fact, for present purposes the holding company itself is simply the means by which Whitney banking offices may be established and operated in East Bank. Consequently, the character of the management and the prospects of the Applicant and its two proposed subsidiary banks may be evaluated largely on the basis of the financial history and condition, character of the management, and prospects of Whitney New Orleans.*

*"The financial history of Whitney New Orleans has been satisfactory. The condition of that bank is sound and its management is regarded as satisfactory. Accordingly, it is believed that the management of Applicant and Whitney Jefferson will be satisfactory and the prospects of the holding company, which depend principally upon the prospects of Whitney New Orleans, are favorable.*

*" . . . The management and policies of the holding company system, it appears, would be*



*equivalent to those of Whitney New Orleans. . . .*  
 [Emphasis supplied.]

The Board of Governors said, however, in denying the protestants' petition for reconsideration of its approval of Whitney Holding's application:

" . . . [T]hey [the arguments for reconsideration] relate largely to an alleged violation of provisions of the National Bank Act, which is administered by the Comptroller of the Currency . . . ." <sup>12</sup>

Whitney-New Orleans's purpose of evading federal and state statutes forbidding branch banking in Louisiana beyond parish lines was known to the Comptroller when he approved the arrangement. His affidavit, which is in the record, states:

" . . . [T]he Whitney National wished to explore with the Comptroller whatever legal means were available for a like expansion into this growing area, which needs additional banking facilities. The formation of an affiliate bank was discussed and the formation of a holding company was also discussed. The bank management felt that a holding company which would own 100% of the stock of both the old bank and the new bank would be preferable to the formation of an affiliate of which the controlling stock would be held by the same persons who control Whitney New Orleans, but which, in view of the wide stock distribution of Whitney New Orleans, would invariably have a minority of stockholders who did not own stock in both banks. The existence of the minority stock interest in each bank, which did not hold corresponding shares in

<sup>12</sup> This paragraph containing the excerpt last quoted above is as follows:  
 "The Board has considered the reasons advanced in the Petition for Reconsideration. To a considerable extent, these are based upon allegations that the Whitney Reorganization Program was not in conformity with applicable provisions of Federal statutes. It is also alleged that the Board's action will unnecessarily place into the hands of federally chartered banks a powerful and unfair competitive advantage over State banks . . . . In the judgment of the Board, those arguments are without substantial merit. In addition, they relate largely to an alleged violation of provisions of the National Bank Act, which is administered by the Comptroller of the Currency, an official of the United States Treasury Department."



the other, was considered by the Whitney management to be an undesirable situation because it could conceivably hamper the most efficient and effective day-to-day operation of the two banks. Since the same group would be managing both banks, it was thought that situations could arise in which it would be impossible for the interests of two different groups of minority stockholders to be fully protected. For this reason, the Whitney management, as was their right and prerogative elected to use a holding company for the purpose of establishing a new bank in Jefferson Parish.

"At all times the applicable Louisiana statutes forbidding the establishment of branch offices across parish lines were fully considered and there was no suggestion that the formation of a holding company would be in any way clandestine or evasive. . . ."

The Comptroller states in his brief:

" . . . [T]he Ninth Circuit has, in a case substantially on all fours with one at bar, recently rejected an attempt to hold the branch banking prohibitions of 12 U.S.C. 36 applicable to an affiliate of a bank holding company. *First Nat. Bank of Billings v. First Bank Stock Corp.*, 306 F. 2d 937 (C.A. 9 [1962]). . . ."

The *Billings* case is far from being factually "on all fours" with the present case. There the bank holding company was organized in 1929, and had been operating in that capacity for 30 years. It possessed stock in 87 banks with 94 offices.

477 Thus, it was not created or organized by a bank, as Whitney Holding was, solely for the purpose of opening a branch office of that bank. It was the traditionally recognized bank holding company which, with its own capital, invests in or buys the stock of banks. It was not the type of holding company here involved, whose only capital was the money siphoned through it by Whitney-New Orleans to open Whitney-Jefferson in a prohibited location.

And the *Billings* opinion says, at page 942:

" . . . What must appellants show, to establish that Valley is such a branch? They must show, that, in sub-

stance, Midland is doing business through the instrumentality of Valley, or vice versa, in the same way as if the institutions were one. (Cf. *Camden Trust Co. v. Gidney*, D.C. Cir., 1962, 301 F.2d 521) We do not agree with appellees that the fact that the two banks are separate corporate organizations demonstrates conclusively that one is not a branch of the other. In the banking field, as elsewhere, courts have power to 'pierce the corporate veil' when the realities require it."

We agree with the Ninth Circuit that the corporate veil should be pierced whenever one bank is "doing business through the instrumentality of" the other or "in the same way as if the institutions were one." "The unitary type of operation," said in the *Billings* opinion to be "characteristic of branch banking," is present here. In such circumstances, the relation of parent and branch exists, even though the banks are separate corporate organizations.

The facts already recited sufficiently show, we think, that Whitney-New Orleans intends to do business through Whitney-Jefferson in the same way as if the institutions were one. The president of Whitney-New Orleans frankly made this quite clear. We recite some of his statements: On June 28, 1961, in submitting to the Comptroller applications to organize Crescent City and Whitney-Jefferson and to consolidate Crescent City with the original Whitney-New Orleans, Whitney's president said:

478 "These applications form part of an overall plan for the operation in the Parish of Orleans and in the Parish of Jefferson of the Whitney organization in holding company form."

On October 27, 1961, he advised his shareholders that—

"The basic purpose of the program is to allow the Whitney organization in New Orleans to commence a Holding Company operation controlling a bank in East Jefferson Parish to protect Whitney's competitive position in that area into which many of Whitney's present customers have moved."

Addressing them on October 28, 1962, he spoke of Whitney-New Orleans and Whitney-Jefferson as "the combined banks," said the large and small banks will "have identical ownership as well as management," and referred to the organization plan as a "method of pooling all of the deposits of our customers and of our capital funds . . . ." And, as we have pointed out, the Board of Governors of the Federal Reserve System said "the holding company itself is simply the means by which Whitney banking offices may be established and operated in East Bank [east Jefferson Parish]."

Consequently, we pierce the corporate veil which shrouds this intricate transaction, and see Whitney-New Orleans attempting to establish a branch in Jefferson Parish in violation of 12 U.S.C. § 36(c). It is a bootstrap operation by which Whitney-New Orleans, using its own funds in corporate maneuvering, seeks to establish a branch in prohibited territory. Like Jacob of old, Whitney-New Orleans covered its hands with the Esau-like plan of reorganization and, despite the telltale sound of its own voice, obtained the blessing of the Comptroller of the Currency. Unlike Isaac, however, the Comptroller was not gulled by the ruse; acting *ultra vires* in the circumstances shown, he knowingly permitted it because he considered the end desirable, and because he thought the corporate maneuvering impervious to attack. But when the corporate veil is pierced, it becomes apparent that both voice and hands were those of Whitney-New Orleans.

The Comptroller contends that the reasoning and holding of our *Camden Trust* opinion<sup>13</sup> are controlling here. We do not agree. Whitney of New Orleans considered the "affiliate" arrangement we approved in the *Camden* case, and decided not to use it because it does not permit the identity of ownership provided by the holding company device, and because it does not assure that even the permitted affiliation will remain constant.

Quite unlike the sum total of the several factors which led us to approve the "affiliate" status in the *Camden Trust* situa-

<sup>13</sup> *Supra*, note 3.

tion, we need observe only that here, *inter alia*, the holding company is not providing Whitney-Jefferson with new and fresh capital, but with capital supplied by Whitney-New Orleans; the new bank will be managed and controlled by the executives of Whitney-New Orleans; and the name, Whitney National Bank in Jefferson Parish (the last three words in small letters on its checks and other forms), is easily susceptible of confusion with the parent organizer.<sup>14</sup> The Whitney National Bank of New Orleans.

We are unwilling to extend the holding of the *Camden Trust* case to cover a situation such as that presented here. We think it clear that the opening of Whitney-Jefferson is prohibited by 12 U.S.C. § 36 and that, consequently, the Comptroller was properly enjoined from issuing a Certificate of Authority for it to begin business. It is therefore unnecessary for us to decide whether the opening is also prohibited by Act 275 of the Louisiana legislature.<sup>15</sup>

*Affirmed.*

<sup>14</sup> On June 28, 1961, the Whitney-New Orleans mailed to the then Comptroller of the Currency the following:

1. An application to organize the Crescent City National Bank.
2. An application to organize Whitney National Bank in Jefferson Parish.
3. An application for approval to consolidate the Crescent City National Bank with the present Whitney National Bank of New Orleans.

At that time, Whitney Holding Corporation had not been incorporated, so it was not the organizer of Whitney-Jefferson.

<sup>15</sup> If so, the actual opening of Whitney-Jefferson would violate the state statute even if the Comptroller had already issued his Certificate of Authority, for Act 275 forbids the opening "whether or not, a charter, permit, license or certificate to open for business has already been issued."

481 In United States Court of Appeals for the  
District of Columbia Circuit

No. 17672, September Term, 1962

[File endorsement omitted]

Civil 1857-62

WHITNEY NATIONAL BANK IN JEFFERSON PARISH, APPELLANT

v.

BANK OF NEW ORLEANS AND TRUST COMPANY, ET AL.,  
APPELLEES

*Appeal from the United States District Court for the  
District of Columbia.*

Before WILBUR K. MILLER, WASHINGTON and DANAHER,  
Circuit Judges.

*Judgment*

August 14, 1963

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, affirmed, and it is

*Further ordered* by this Court that appellees recover from appellant their taxable costs on appeal, and have execution therefor.

Per Circuit Judge WILBUR K. MILLER.

482 In United States Court of Appeals for the  
District of Columbia Circuit

[File endorsement omitted]

No. 17672, September Term, 1963

WHITNEY NATIONAL BANK IN JEFFERSON PARISH, APPELLANT

v.

BANK OF NEW ORLEANS AND TRUST COMPANY, ET AL.,

APPELLEES

No. 17681

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY, APPELLANT

v.

BANK OF NEW ORLEANS AND TRUST COMPANY, ET AL.,

APPELLEES

Before BAZELON, Chief Judge, WILBUR K. MILLER, FAHY,  
WASHINGTON, DANAHY, BASTIAN, BURGER, WRIGHT, and  
McGOWAN, Circuit Judges, in chambers.

*Order denying the petitions for rehearing en banc*

October 17, 1963

On consideration of the petition of appellant in case No. 17672 for rehearing *en banc*, of the petition of appellant in case No. 17681 for rehearing *en banc*, and of the answer thereto filed by appellee Banks, and on consideration of the motion of appellant in case No. 17681 for leave to file a supplemental memorandum in support of the petition for rehearing *en banc*, and of the objection thereto filed by appellee Banks, and on consideration of the motion of appellee Banks for leave to file a supplemental appendix to their reply to appellant's petition for rehearing in case No. 17681, it is

*Ordered* by the court that: (1) appellant's motion for leave to file a supplemental memorandum in support of the petition for rehearing *en banc* in case No. 17681 is hereby denied; (2) the motion of appellee Banks for leave to file supplemental appendix to their reply to appellant's petition for rehearing *en banc* in case No. 17681 is hereby granted; and (3) appel-

lants' aforesaid petitions for rehearing *en banc* are hereby denied.

Per Curiam

*Circuit Judges* WRIGHT and McGOWAN did not participate in the foregoing order.

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[Clerk's Certificate to foregoing transcript omitted in printing]

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Supreme Court of the United States

No. —, October Term, 1963

JAMES J. SAXON, PETITIONER

vs.

BANK OF NEW ORLEANS AND TRUST COMPANY, ET AL.

*Order extending time to file petition for writ of certiorari*

January 9, 1964

Upon consideration of the application of counsel for petitioner.

*It is ordered*, That the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including January 30, 1964.

EARL WARREN,

*Chief Justice of the United States.*

Dated this 9th day of January, 1964.



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## Supreme Court of the United States

No. 763, October Term, 1964

WHITNEY NATIONAL BANK IN JEFFERSON PARISH, PETITIONER

vs.

BANK OF NEW ORLEANS AND TRUST COMPANY, ET AL.

*Order allowing certiorari*

March 23, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is consolidated with No. 798 and a total of two hours is allotted for oral argument.

*And it is further ordered*, That the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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## Supreme Court of the United States

No. 798, October Term, 1963

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY, PETITIONER

v.

BANK OF NEW ORLEANS AND TRUST COMPANY, ET AL.

*Order allowing certiorari*

March 23, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is consolidated with No. 763 and a total of two hours is allotted for oral argument.

*And it is further ordered*, That the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.